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FIRST, SECOND AND THIRD
ANNUAL REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF MONTANA.

TO HIS EXCELLENCY, JOSEPH K. TOOLE, GOVERNOR OF MONTANA.

DECEMBER, 1890-92.

HELENA, MONT.:
INDEPENDENT PUBLISHING CO.
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ANNUAL REPORT

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FIRST ANNUAL REPORT
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ATTORNEY GENERAL
OF THE
STATE OF MONTANA.

OFFICE OF THE ATTORNEY GENERAL, }
HELENA, MONT., December 31, 1890. }

To His Excellency, Joseph K. Toole, Governor of Montana:

In obedience to the implied requirements of the law and the Constitution of this State, I herewith submit this, the first annual report of the matters relating to the office of Attorney General from the time of the admission of the State into the Union, to-wit: November 9th, 1889, up to the close of this year.

Included in this report is a list of cases decided in the several courts which I have attended to in person.

Also included in this report will be found some rulings made by this department upon some portions of the laws and our construction thereof.

Applications to this department for the construction and interpretation of many of our laws, sections of others, and provisions of the Constitution, have been numerous and at times burdensome, yet a greater portion of it was of a character and distinctly referred to matters and things upon which the statutes of this State does not make it the duty of this office to pass upon, or proffer advice or counsel thereon; yet the most of it was of such a character that we could not disregard the requests therein contained, and the regulation of this department was that all letters

containing requests for rulings on our laws should receive careful consideration, which has been consistently complied with in every case.

The statute makes it the duty of the Attorney General to prosecute and defend all actions in the Supreme Court of this State in which the State shall be interested, and, when requested by the Governor or either branch of the Legislative Assembly, to appear for the people of this State in any other court or tribunal in any cause or matter in which the people of this State may be a party or interested. It is also his official duty, at the request of the Governor, the Secretary of State, the State Treasurer, the State Auditor or Superintendent of Public Instruction, to prosecute and defend all suits relative to matters connected with their several departments. It is, as well, the duty of the Attorney General, when required, to give his opinion upon all questions of law submitted to him by the Legislative Assembly or either branch thereof, or by the Governor, Secretary of State, State Auditor, State Treasurer or Superintendent of Public Instruction, and the Board of County Commissioners of the several counties in the State.

Notwithstanding the fact that our duties may be limited to the doing of only that which is required by the express provisions of the statute, yet we are daily in receipt of letters from the several county, township and district officers, requesting opinions of or concerning the performance of some official act or duty or the interpretation or construction of some law or section of the law or Constitution under which they may or have been called upon to act in an official capacity, which, when complied with—as we have uniformly done—imposes upon this office labors that even the strongest might desire relief from.

SETTLEMENT WITH CERTAIN COUNTY TREASURERS.

At the close of the fiscal year, ending December 1, 1889, Hon. E. A. Kenney, Auditor of the State, and Hon. R. O. Hickman, State Treasurer, called the attention of this office to a question that was giving to their several departments much trouble and vexation, which was no less a matter than their inability to effect a settlement with eleven (out of sixteen) of the treasurers and tax collectors in Montana, and assigned the following reasons therefor:

The Treasurer of Yellowstone County contended that he had a lawful right and was in duty bound to charge the State of Montana three (3) per cent. for collecting all moneys belonging to the State in his county, except license taxes, and cover the same into the contingent fund of the county, while in truth and

in fact the same had been done as claimed, in the sum of \$260.11.

It was claimed on the part of the treasurer of Cascade, Missoula, Beaverhead and Jefferson counties, that in accordance with their understanding and construction of Section 12 of "An Act to provide fees and compensation for the several county officers in the counties of Montana," approved March 14, 1889; page 152, Laws Sixteenth Session, they and each of them had a lawful right, and it was their duty so to do, and in truth and in fact had deducted from one to five per cent. out of all moneys collected for licenses due the State, and cover said fees so deducted into the contingent fund of their said county.

It was contended by the ex-Treasurer of Custer County that under the law he was compelled to deduct the sum of three (3) per cent. out of all moneys collected by him for the State, except license taxes, and cover the same into the contingent fund of the county, which, in fact, he had done in the sum of three hundred and eighteen dollars and thirty-one cents (\$318.31). The same contention existed in the County of Gallatin, where the sum of two hundred and seventy-three dollars and six cents (\$273.06) of the State's money had been deducted as fees for collecting the State's portion of the taxes.

In the County of Madison the ex-treasurer contended that he was required under the law to charge the State of Montana five (5) per cent. as a fee for collecting the State's portion of the moneys received by the issuance of licenses in his county and cover the same into the contingent fund of his county. That he had a legal right and it was his official duty to deduct from all other moneys collected by him for the use and benefit of the State, the following fees and percentages:

1. Twelve and one-half per cent. on the first \$3,000.
2. Ten per cent. on amounts between \$3,000 and \$4,000.
3. Six per cent. on the amount between \$4,000 and \$5,000.
4. Four per cent. on all sums over \$5,000 and under \$10,000.
5. Three per cent. on all sums over \$10,000; and cover the same into the contingent fund of the county, and pay over the remainder to the State Treasurer.

In the counties of Deer Lodge, Silver Bow and Lewis and Clarke, the several treasurers contended that they were in duty bound to deduct a fee out of all moneys collected by them upon the issuance of license, and that the State should bear its pro rata of the expense for collecting the same.

These matters were then placed in my hands for collection, whereupon the counties of Cascade, Missoula, Beaverhead, Jefferson and Yellowstone paid into the State Treasury all moneys de-

ducted as fees in the form and manner by them contended for. In justice to these officials, it is fair to say that in no case was it contended for, nor had any one of the county treasurers taken to themselves any of the fees so deducted, but in each instance had covered them into the contingent fund of their said county.

The counties of Deer Lodge, Silver Bow, Madison, Gallatin, Lewis and Clarke and Custer refused to pay upon the advice of this office, thereupon an agreed case was made up and filed in the District Court of the First Judicial District, in and for the County of Lewis and Clarke, wherein the State Auditor was the plaintiff and R. P. Barden, County Treasurer of Lewis and Clarke County, was the defendant in said case, which is included in the opinion of Judge Hunt, and is as follows:

In the District Court of the First Judicial District of the State of Montana, in and for Lewis and Clarke County.

The State of Montana, ex rel. E. A. }
 Kenney, Auditor, }
 vs. }
 R. P. Barden, County Treasurer. }

Opinion rendered by the Hon. William H. Hunt in this cause.

The question of law involved in this proceeding arose upon the following agreed statement of facts (venue):

TITLE OF CAUSE.

Now comes the said parties above named and show to the court that there is a question of difference between them which is the subject of a civil action, and have agreed upon the case containing the facts upon which the controversy depends, and present a submission of the same to this Honorable Court, as follows: At all the times hereinafter mentioned the said E. A. Kenney was and now is State Auditor for the State of Montana, and as such State Auditor it is his duty to direct prosecution in the name of the State of Montana against all delinquent creditors of the State revenue, and against all debtors of State, or persons being in possession of the public funds, money or property, who may neglect or refuse to pay or deliver the same to the proper officer.

That all the times hereinafter mentioned R. P. Barden was and now is County Treasurer of the County of Lewis and Clarke, in this State, whose duty it is to levy and collect a license tax in this county from such persons, trades and occupations as is specified in "An Act to amend an act entitled 'An Act concerning licenses,' approved March 10, 1887; approved September 14, 1887. And to pay over to the State Treasurer every three months all moneys that he may have in his hands

belonging to the State in accordance with the provisions of Section 792, page 355, Revised Statutes."

That for the quarter ending November 30, 1889, the said R. P. Barden as such County Treasurer had collected in licenses or money received by the issuance of licenses the sum of \$23,848.35, and that he did then and there deduct the sum of \$441.02 as his commissions therefor, leaving a balance of \$23,407.33, and that he then and there paid over to the State Treasurer of the State of Montana the sum of \$5,851.83, it being twenty-five per cent. of \$23,407.33; and refuses to pay said State twenty-five per cent. of \$23,848.35.

It is claimed on the part of the State that the said R. P. Barden should pay to the State Treasurer the sum of \$5,962.08, it being twenty-five per cent. of the licenses collected for the quarter ending November 30, 1889; while it is contended on the part of the said county that the treasurer must deduct his fees of collection out of the whole sum and pay to the State twenty-five per cent. of the remainder.

E. A. KENNEY,
State Auditor.

R. P. BARDEN,
County Treasurer.

STATE OF MONTANA, }
COUNTY OF LEWIS AND CLARKE. } ss.

R. P. Barden and H. J. Haskell, Attorney General of the State of Montana, and attorney for the said E. A. Kenney, being first duly sworn, each for himself says: That the statement of facts as herein set forth are true of their own knowledge, that this controversy is real and this proceeding is had in good faith to determine the rights of the parties.

R. P. BARDEN.

H. J. HASKELL,

Attorney General and Attorney for E. A. Kenney.

Subscribed and sworn to before me this 27th day of February, 1890.

R. H. THOMPSON,
Deputy Clerk District Court.

The question presented is, whether, under the statutes prescribing the fees of county treasurers, such officials shall turn over to the State Auditor the percentage of license collections due the State, less the County Treasurer's fees for such license collection, or whether the twenty-five per cent. directed to be transmitted to the auditor shall be to the State a net percentage, free from deductions and charges made by the county officials collecting or transmitting the same.

I find upon application of the statutes bearing upon this question to the facts but little difficulty in concluding that the State must recover judgment. Section 12 of the Salary Law of March

14, 1889, Sixteenth Session Laws of the Territory, page 152, provides that "The county treasurers of the several counties shall receive for all services required of them by law to be performed for any county of the Territory (State) of Montana, or in which any county or the Territory (State) of Montana is a party, or in any way liable or responsible for costs or fees to said treasurers, each an annual salary of \$1,500: *Provided*, That in addition to the salaries above specified said county treasurers shall receive a percentage of all moneys or warrants collected for licenses issued as follows."

There seems to have been an express plain intention of the Legislature, by the provisions cited, that the salary should cover, generally, all services to be rendered for the county and the State. But the law then goes further, and, after its general provision for a fixed salary, specifically by proviso grants further compensation in the way of percentages of all moneys or warrants collected for licenses issued.

A question involved, therefore, is whether or not the emoluments granted the County Treasurer by the provisos (and which are in addition to the salary fixed by the first and general clause of the section under consideration) are to be paid by the State or whether the law as a whole points out that the limitations upon the provisions of Section 12 may be. We have only to look to Section 13 to assist in determining this matter. It provides that: "The treasurer's salary shall be paid one-fourth quarterly by warrants drawn on the contingent fund of the proper county, and payable as other warrants on said fund are paid. The percentage due said treasurers upon licenses collected shall be ascertained by the Board of County Commissioners and paid quarterly in the same manner as provided for the payment of salaries."

The treasurer's salary is to be paid by the county by warrant drawn on a specified fund. This is indisputable. And the percentage due upon licenses collected shall be paid "in the same manner as provided for the payment of salaries." There being but one method of paying the salary, there is, as a logical conclusion under the words of the statute, but one method and but one "manner" of paying the percentage due upon licenses collected.

It is to my mind clear, therefore, that the general provision as to the treasurer's salary is in no wise modified or extended so as to render the State liable to him, or to his county, for any fees to which he is by law entitled, and that for both his salary and all license money percentages he must look to the county alone.

The law does not contemplate or authorize any deductions from the twenty-five per cent. which "shall be paid over by the County Treasurer to the Territorial (State) Treasurer for the use of the Territory (State)," pursuant to the law of September

14, 1887, Laws Extraordinary Session, page 77. There are no provisions, expressed or implied, which warrant such a construction of the statutes, while the act of 1889 plainly states and fixes from what source the County Treasurer must take his fees.

I therefore hold that the treasurer unlawfully retains the sum of \$110.25, now in his hands and deducted from net twenty-five per cent. due the State, and that his duty is to forthwith pay the same to the proper State authorities.

Judgment will be entered for the plaintiff for \$110.25 and costs.

The State of Montana, ex rel. E. A. }
Kenney, State Auditor,

vs.

John L. Patterson, County Treas- }
urer of Gallatin County.

Notwithstanding this clear elucidation of the law upon the subject, this office was obliged to prepare an agreed statement of facts and file the same in the County of Gallatin against the treasurer of said county. We went to Bozeman and argued the case to the court on the 29th of May, 1890. Thereafter Judge Henry, of that district, gave judgment against the defendant and in favor of the State, which was promptly paid.

The State of Montana, ex rel. E. A. }
Kenney, State Auditor,

vs.

Lew Coleman.

This was a case against the ex-Treasurer of Deer Lodge County, where the same proceedings were had as in the two former cases. Owing to the large amount of work that had accumulated in this department, we were obliged to request the privilege to submit the State's side of the case upon briefs. The Hon. W. S. Shaw, County Attorney, granted us the favor, and, the court consenting, we filed a brief in the case in the court in Deer Lodge. In May, 1890, the court gave judgment in favor of the State in the sum claimed, amounting to about \$646.92; but, there being no funds in the county treasury available, a settlement was effected by a warrant drawn for such sum and transmitted to the State Treasurer.

The State of Montana, ex rel. E. A. }
Kenney, State Auditor,

vs.

George Gohn.

We were required to file an agreed case with the former

Treasurer of Madison County, but, in consequence of the long distance to travel, we obtained the consent of Judge Galbraith, judge of that district, to submit the case for the State on briefs. In due time judgment was rendered for the State in the sum of \$345.41, which was paid in the December settlement, 1890, out of the first funds available in the county.

The State of Montana, ex rel. E. A.	}
Kenney, State Auditor,	
vs.	
Harry C. Kessler, County Treasurer	}
of Silver Bow County.	

After some correspondence an agreed case was filed in the District Court in and for Silver Bow County, to obtain a ruling of Judge McHatton, upon the question of differences existing upon the retention of fees claimed by the State as referred to supra: By reason of the large amount of business upon the court docket, we were not able to get this case assigned for a hearing until the — day of September, when it was set down for argument on September 27, 1890, at which time we were in attendance on the court and presented the case on the part of the State. Subsequently Judge McHatton ordered judgment to be entered up in favor of the State for the amount claimed by the State in the sum of \$1,253.96. The County Attorney, Mr. Baldwin, was of the opinion that an appeal would be taken to the Supreme Court in order to obtain a decision from the highest State court in Montana, for which opinion so entertained the State has not requested the issuance of any execution. It is safe to say that a speedy settlement will be made of this case by paying the judgment if the county shall decide not to take an appeal.

CUSTER COUNTY.

The only remaining matter unsettled is that of the ex-Treasurer of Custer County, Mr. C. L. Merrill, who owes the State the sum of \$318.31, deducted as a fee for collecting State taxes. We have had some correspondence with him on the subject, have made one visit to Miles for the sole purpose of effecting a settlement, and upon the occasion of another visit there he assured us that he would advise the County Commissioners to pay the claim, and in conversation with said commissioners they were desirous of putting the matter off until the matter coming up in some of the other District Courts, might be passed upon in the Supreme Court on appeal. They further expressed a desire to avoid a suit, but were willing to pay the claim whenever the Supreme Court should pass upon the question. The only opportunity to determine this question in the high court

lies with Silver Bow County, and unless some speedy action is taken in that case we shall take some definite action with Custer County.

The laws authorizing the collection of moneys belonging to the State from the County Treasurer are not only very unsatisfactory, but are conflicting, and they should receive the immediate and careful attention of the Legislature, so that they may be modified to such an extent as to have them all in harmony with each other. Too much care and attention or detail can not be paid to the collection of the State revenue, but every effort should be made to procure the passage of such laws as will place the State funds in the hands of her disbursing officers as soon thereafter as it leaves the pockets of the people as can conveniently be done, in order that the creditors of this State may receive their due and the State economize by a saving of her interest thereon. Having State funds lying in our banks for a period of three months is not practical economy for the State, and we therefore recommend legislation adequate as a relief.

CASES IN COURTS.

Appended to this report appears a list of cases in which the State was a party and to which the Attorney General has given official attention. In connection therewith I call your attention to two matters, which are incidentally connected with these cases: Upon the incoming of this State into the Union, the applications for the high and prerogative writ of habeas corpus on the part of persons confined in our jails upon regular commitments, were so numerous that it might be termed a legal epidemic in that branch of the law. The expenses entailed upon the counties in many cases were excessive, and when we consider that in all cases the party applying was remanded upon an examination, the legality of their imprisonment or confinement was apparent. We would therefore recommend that legislation be had, which shall require the person interested applying for a writ of habeas corpus, to first file his petition with the District Judge of the district in which such person resides, except in the absence of the judge thereof the application may be made to the nearest judge or the Supreme Court, as convenience may require.

Second—That before the Supreme Court or any judge thereof shall cause the issuance of a writ upon the petition of any person, such person interested or some one in his behalf should be required to make application by motion for the writ, showing in such application the grounds upon which the petitioner will rely for its issuance. The law of the case might be passed upon on the hearing of this motion, and thereby do justice to the party in interest and save the county unnecessary expenses.

BOARD OF MEDICAL EXAMINERS.

The creation of this board by the Sixteenth Legislative Assembly has been a source of much litigation among the physicians on one side and this board on the other. I would recommend legislation to the effect that the cases filed in the District Court shall be, on the part of the board, managed by the County Attorney of the county in which the case is docketed without fee or compensation from the board, and that the same rule apply to the Attorney General, if the case shall be appealed to the Supreme Court.

2. That a rule of procedure be laid for the appeal of cases from the order of the Board of Medical Examiners denying or granting a certificate to practice medicine and surgery.

3. That a rule of procedure be laid down for the hearing of such cases in the District Court and regulating the form of pleadings or what pleadings shall be required.

4. That no certificate be issued, except to actual and bona fide residents in good faith in Montana.

At present there are no cases on the docket in the Supreme Court wherein the State is a party or interested, nor has our attention been called to any notable infraction of the law which has not been promptly investigated by the Grand Jury, aided by the zealous efforts of the County Attorney of the county wherein the case originated.

SALARY OF COUNTY ATTORNEY.

At a very early date this department was called upon for our construction or interpretation of Section 19, Article VIII, of the Constitution, touching and concerning the liability of the State to pay one-half of the salary of the present County Attorneys.

Our opinion was that so much of said section which applied to the payment of one-half of the salary of the County Attorney was not self-executing, and that under our present statute on the subject, the county was liable for the entire salary. Whether the attorneys acquiesced in this ruling as the law of the case, or through necessity, we are not now able to subscribe, but they are now all drawing their full salary from their respective counties with alarming regularity.

REGISTRATION LAW.

The constructions of the various powers exercised under this law were as many and multifarious as there were duties to be performed under it or rights claimed thereunder, if we were to judge by the varied questions addressed to this department between the opening and closing of the registration books. Among other things, it has been held by this department that it requires

a personal application to the registry agent, on the part of the person registered, to have his name taken off the official register.

That a change of residence in the county, district or precinct requires a new registration.

That all persons who had declared their intention to become a citizen of the United States prior to the adoption of the Constitution, namely: October 1, 1889, shall be entitled to be registered and vote for a period of five years from and after the adoption of the Constitution.

That so much of Section 6 of the Registration Law, which provides a term of residence of six months in Montana in order to acquire a residence for the purpose of registering and voting, is in conflict with Section 2 of Article IX of the Constitution, therefore is modified to that extent.

That the children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on the subject by the government of the United States, may have become citizens of any of the said states, under the laws thereof, being under the age of twenty-one years at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States, Section 4, 3 United States Statutes.

That whenever any person coming within the purview and meaning of said law, should present himself to the proper registry agent and make his application to be registered, and had no papers in his possession to prove the citizenship of either parent, the same rule laid down in Section 8 of the Registration Act for the government of registry agents in testing an applicant for registration concerning his citizenship, loss of papers, etc., is ample in cases of this kind; that the agent should not apply a more stringent rule in this case than in case of loss of papers. Where, as in the case of Jefferson County, the commissioners had ordered the registry agents to hold their office in three different places in their districts, we held that in such cases electors are not chargeable with even constructive notice of the failure of duty by the registry agent, or of the irregular or defective manner of performing the duties prescribed by law, nor are the electors in default when they procure themselves to be registered on the official register, used as official, regular and valid by the registry agent. They find the registry agent in his office, with his seal, papers, blanks, affidavits, the official register in his possession—the indicia of his authority—which is all that the elector need inquire about.

That registering on Sunday is illegal.

That the benefit of an enlistment in the regular or volunteer

forces of the United States and an honorable discharge therefrom lays the foundation to become a citizen of the United States, but does not grant citizenship to an alien.

That an Indian or half-breed making an application as an alien to become a citizen of the United States, not being a white person within the purview of the naturalization laws, but wards or pupils of the nation, cannot be naturalized, except under explicit provisions of treaty or statute to that effect, either declaring a certain tribe, or such members of it as choose to sever their tribal relations, to be citizens, or authorizing individuals of particular tribes to become citizens on application to a court of record of the United States for naturalization, and satisfactory proof of fitness for civilized life.

That an Indian police officer, living upon an Indian reservation, drawing rations and pay from the government, and, in fact, a ward of the government, was not entitled to be registered, even if naturalized.

That an elector in the possession of a State registry certificate issued in a county other than in which he offers to vote, cannot present the same at the polls on election day and be allowed to vote thereon.

That the right of an elector to vote for the head of the ticket—such as member of Congress and State officers—in any county other than the one in which he is registered is not warranted by the present law.

It will be observed that this law should provide for a particular location of the office of the registry agent in his district; also whether it is necessary for an applicant to be personally present at the office of the registry agent in order to have his name taken off the official register and obtain a state or county registration certificate.

I would recommend as a partial substitute that the period of registration fixed in Section 7 of the Registry Law, at two years, be changed or extended to ten years; that the County Clerk of each county be ex-officio the registry agent of the county and keep the official register in his office; that whenever an elector who has been registered removes from the county may, upon application in person or by letter, obtain from the County Clerk a certificate that his name has been cancelled from the official register at his request, and, upon presenting the certificate to the County Clerk of the county where he resides, he shall be entitled to have his name entered in the official register of that county, provided he has resided therein thirty days; that ——— days prior to every general election the Justices of the Peace in each township shall have power, and shall be required, under such rules as may be prescribed, to register the names of all legal voters applying, and forward all such names to the County

Clerk, who shall enter them upon the great register of the county; that _____ days prior to every general election the Board of County Commissioners of each county shall carefully examine the official register of the county and authorize the clerk to cancel the names of all electors that have died, removed from the county, or in prison or insane asylum, since the last election; that the list or official register so corrected be published as under the present law; that all electors causing their names to be placed upon the official register after the poll list has been printed, may obtain from the County Clerk when so registering a certificate of that fact, and, upon presenting such certificate at the proper precinct on election day, be allowed to vote.

WITHDRAWAL OF LABOR CANDIDATE.

Immediately upon the withdrawal of the Hon. W. T. Field, the Labor candidate for Congress, from the Congressional ticket of the party, this department was in receipt of a communication from James McCormick, Esq., County Clerk of Dawson County, asking if he should print W. T. Field's name upon the ticket; and from Alfred E. Rogers, County Clerk of Choteau County, asking if he should not send out stickers with his tickets to be placed over his name.

We held that the name of W. T. Field should be printed upon the ticket as the nominee of the Labor party; that the printing of the name of the party without the name of the nominee was a violation of the law; that stickers could not be used under the authority of the County Clerk or judges of election except upon a withdrawal, etc., of the nominee and a new nomination made in lieu thereof, and properly certified by the Secretary of State.

I would therefore recommend that in such cases stated as above, the Secretary of State shall, under such restrictions or rules as may be prescribed, certify such vacancy to all the county clerks, who shall be authorized to print upon the ballots the name of the party with the nominee blank.

EXPENSE ACCOUNT.

Upon the organization of the State Board of Equalization, State Board of Pardons, the State Board of Prison Commissioners and State Board of Land Commissioners, we were met with the fact that there were no appropriations made to defray the expenses of these several commissions, and with the further inhibition—in the constitution—upon the auditor, from drawing a warrant for the actual expense incurred by them in the necessary discharge of their duties, until an appropriation was made therefor.

We, therefore, felt compelled to place the appropriation of this

department at the joint disposal of these several commissions, which action of ours we trust will meet the approval of our superiors to the same extent that it has met and supplied the necessities of these commissions for the hour.

Appended to this report is a table showing in detail the amount drawn out of the appropriation of this department, for what purpose, when, and the total expense of this office.

PUBLIC LANDS.

In consequence of the length of this report and our lack of time, we have omitted therefrom many matters, that in our judgment, was of importance, among which is the action taken and the official acts done by us in the matter of opposing and contesting claims made by persons in this State to certain lands belonging to this State. The action taken by us in connection with the State Board of Land Commissioners in contesting entries of claimants to State lands will be noticed at length in their report to you.

H. J. HASKELL.

Attorney General.

List of Cases in Which the State was a Party and the Attorney General was Attorney or of Counsel.

PARTIES TO ACTION.

The State of Montana, ex rel. W. H. Roberts,

vs.

E. A. Kenney, State Auditor.

Nature of Action—Application for writ of mandate to obtain warrant for amount of services rendered the State as Representative.

Court Where Commenced—District Court, Lewis and Clarke County.

Date of Hearing—December 28, 1889.

Date of Rendition of Judgment and for Whom—Judgment rendered January 2, 1890, for relator. Peremptory writ ordered to issue.

Name of Attorneys—W. F. Sanders and Thompson Campbell for relator; H. J. Haskell for resistant.

PARTIES TO ACTION.

The State of Montana,
vs.

Ah Jim.

Nature of Action—Motion to quash information on indictment for murder. Motion granted. State appeals to Supreme Court.

Court Where Commenced—District Court First Judicial District, Lewis and Clarke County.

Date of Hearing—January 11, 1890.

Date of Rendition of Judgment and for Whom—Judgment affirmed, January 14, 1890.

Name of Attorneys—Henri J. Haskell and C. B. Nolan for appellant; A. J. Craven and C. C. Newman for defendant.

PARTIES TO ACTION.

The State of Montana, Respondent,
vs.

John Sullivan, Appellant.

Nature of Action—Indictment for robbery. Verdict of guilty. Appealed to Supreme Court.

Court Where Commenced—District Court Second Judicial District of Silver Bow County.

Date of Hearing—January 13, 1890.

Date of Rendition of Judgment and for Whom—Judgment of lower court reversed, January 16, 1890.

Name of Attorneys—McBride and Haldorn for appellant; H. J. Haskell for respondent.

PARTIES TO ACTION.

The State of Montana, ex rel. L.
Rotwitt,

vs.
R. O. Hickman, Treasurer, Re-
spondent.

Nature of Action—Application for alternative writ of mandate.

Court Where Commenced—Supreme Court.

Date of Hearing—February 13, 1890.

Date of Rendition of Judgment and for Whom—Judgment rendered February 15, 1890, for relator. Peremptory writ ordered to issue.

Name of Attorneys—McCutcheon and McIntyre for relator; Henri J. Haskell for respondent.

PARTIES TO ACTION.

William Thompson, Relator,
 vs.
 E. A. Kenney, Respondent.

Nature of Action—Application for alternative writ of mandate to obtain warrant for amount of services rendered the State as representative.

Court Where Commenced—Supreme Court.

Date of Hearing—January 20, 1890.

Date of Rendition of Judgment and for Whom—Judgment rendered January 28, 1890, for relator. Peremptory writ ordered to issue.

Name of Attorneys—E. D. Weed, McCutcheon and S. A. Balliet for relator; H. J. Haskell for respondent.

PARTIES TO ACTION.

George F. Thompson,
 vs.
 The State of Montana.

Nature of Action—Application for writ of habeas corpus.

Court Where Commenced—Supreme Court.

Date of Hearing—April 16, 1890.

Date of Rendition of Judgment and for Whom—Writ denied April 22, 1890.

Name of Attorneys—Robert B. Smith for applicant; Henri J. Haskell and Henri J. Burleigh for respondent.

PARTIES TO ACTION.

The State of Montana, ex rel. The
 Journal Publishing Company, Ap-
 pellant,

vs.

E. A. Kenney, State Auditor, Re-
 spondent.

Nature of Action—Application for writ of mandate to obtain warrant for amount of services rendered in printing and advertising done for the county.

Court Where Commenced—District Court First Judicial District of Lewis and Clarke County.

Date of Hearing—April 19, 1890.

Date of Rendition of Judgment and for Whom—Judgment affirmed, April 24, 1890.

Name of Attorneys—McCutcheon and McIntyre for appellant; Henri J. Haskell for respondent.

PARTIES TO ACTION.

The State of Montana, Appellant, }
 vs.
 Cornelius D. Sullivan, Respondent. }

Nature of Action—Indictment for assault with intent to kill.
 State appeals from judgment of court.

Court Where Commenced—District Court Third Judicial
 District of Deer Lodge County.

Date of Hearing—April 28, 1890.

Date of Rendition of Judgment and for Whom—Judgment of
 lower court affirmed, May 9, 1890.

Name of Attorneys—W. S. Shaw and Henri J. Haskell for
 appellant; John F. Forbis for respondent.

PARTIES TO ACTION.

The State of Montana, Respondent, }
 vs.
 Thomas King, Appellant. }

Nature of Action—Indictment for murder. Verdict of
 guilty. Defendant appeals.

Court Where Commenced—District Court Fifth Judicial Dis-
 trict of Jefferson County.

Date of Hearing—April 29, 1890.

Date of Rendition of Judgment and for Whom—Judgment of
 lower court affirmed, May 2, 1890.

Name of Attorneys—George D. Greene and H. L. Hay for
 appellant; H. J. Haskell and M. H. Parker for respondent.

PARTIES TO ACTION.

William Mitchell }
 vs.
 The State of Montana. }

Nature of Action—Application for writ of habeas corpus.

Court Where Commenced—Supreme Court.

Date of Hearing—May 3, 1890.

Date of Rendition of Judgment and for Whom—Judgment
 rendered May 3, 1890. Writ ordered to issue.

Name of Attorneys—Miles J. Cavanaugh for applicant; Henri
 J. Haskell for the State.

PARTIES TO ACTION.

Jake Polsky }
 vs.
 The State of Montana. }

Nature of Action—Application for writ of habeas corpus.

Court Where Commenced—Supreme Court.

Date of Hearing—May 7, 1890.

Date of Rendition of Judgment and For Whom—Judgment rendered May 7, 1890. Writ denied.

Name of Attorneys—Dubose and Penry for applicant; Henri J. Haskell for the State.

PARTIES TO ACTION.

The State of Montana

vs.

Albert Jackson.

Nature of Action—Indictment for Murder. Verdict of guilty. Defendant appeals.

Court Where Commenced—District Court First Judicial District of Lewis and Clarke County. Appealed to the Supreme Court.

Date of Hearing—May 10, 1890.

Date of Rendition of Judgment and for Whom—Judgment of lower court affirmed May 14, 1890.

Name of Attorneys—T. F. Casey, Davis and Russell for appellant; C. B. Nolan and Henri J. Haskell for respondent.

PARTIES TO ACTION.

State of Montana, Respondent,

vs.

Louis H. McDonald, Appellant.

Nature of Action—Grand larceny.

Court Where Commenced—District Court Eighth Judicial District of Choteau County.

Date of Hearing—July 19, 1890.

Date of Rendition of Judgment and for Whom—Judgment reversed July 25, 1890.

Names of Attorneys—S. H. McIntyre for appellant; H. J. Haskell and John W. Tattan for respondent.

PARTIES TO ACTION.

Northern Pacific Railroad Company, Appellant,

vs.

J. S. Patterson, Treasurer Gallatin County, Respondent.

Nature of Action—Taxes. Appealed to the Supreme Court.

Court Where Commenced—District Court Sixth Judicial District of Gallatin County.

Date of Hearing—July 22, 1890.

Date of Rendition of Judgment and for Whom—Judgment affirmed in lower court August 1, 1890.

Name of Attorneys—Cullen, Sanders & Shelton, Armstrong, Hartman and F. M. Dudley for appellant; H. J. Haskell and R. P. Vivion and H. C. Cockrell for respondent.

PARTIES TO ACTION.

E. H. Becker, Appellant,

vs.

Board of County Commissioners of
Yellowstone County, Respondent.

Nature of Action—Publishing constitution. Plaintiff appealed to the Supreme Court.

Court Where Commenced—District Court Seventh Judicial District, Yellowstone County.

Date of Hearing—July 28, 1890.

Date of Rendition of Judgment and for Whom—Judgment of lower court affirmed July 31, 1890. Judgment for defendant.

Name of Attorneys—O. F. Goddard for appellant; James R. Goss and H. J. Haskell for respondent.

PARTIES TO ACTION.

William Dearborn

vs.

State of Montana.

Nature of Action—Application for writ of habeas corpus and certiorari.

Court Where Commenced—Supreme Court.

Date of Hearing—October 7, 1890.

Date of Rendition of Judgment and for Whom—Judgment rendered October 8, 1890. In this case it appears that the defendant was indicted in Choteau County for escaping from jail, and was tried, found guilty and sentenced for a term of three years in the State Penitentiary. Subsequently the County Attorney of said county filed an information against him, upon which he plead not guilty. A trial to the court and jury was had, and the defendant was found guilty and sentenced to a term of five years in the State Penitentiary. This application for a writ of habeas corpus and certiorari was for the purpose of testing the legality of the defendant's imprisonment under the judgment and verdict on the information. The court granted his discharge under the commitment issued upon the judgment rendered on conviction and sentenced under the information. The defendant is still confined in the penitentiary under the former judgment, escape from jail.

Name of Attorneys—S. A. Balliet for petitioner; H. J. Haskell for the State.

PARTIES TO ACTION.

State of Montana, Respondent, }
 vs. }
 James W. Gibbs, Appellant. }

Nature of Action—Indicted for perjury. Appealed from Cascade County.

Court Where Commenced—District Court Eighth Judicial District of Cascade County.

Motion to dismiss appeal by Attorney General, October 11, 1890. Appeal dismissed October 11, 1890. Leave granted to withdraw transcript and refile it, October 18, 1890.

Date of Rendition of Judgment and for Whom—Judgment of lower court affirmed November 10, 1890.

Name of Attorneys—Hoffman and Donovan for appellant; H. J. Haskell and Douglas Martin for respondent.

PARTIES TO ACTION.

I. D. McCutcheon }
 vs. }
 State of Montana. }

Nature of Action—Application for a writ of habeas corpus.

Court Where Commenced—Before H. N. Blake, chief justice.

Writ denied September 24, 1890.

Date of Hearing—

Name of Attorneys—H. G. McIntire for petitioner; H. J. Haskell for resistant.

PARTIES TO ACTION.

I. D. McCutcheon }
 vs. }
 State of Montana. }

Nature of Action—Application for a writ of habeas corpus.

Court Where Commenced—Supreme Court.

Date of Hearing—Argued and submitted October 21st, 1890.

Date of Rendition of Judgment and for Whom—Writ denied and prisoner remanded October 28, 1890.

Name of Attorneys—H. G. McIntire for petitioner; H. J. Haskell for resistant.

PARTIES TO ACTION.

Carlton V. Norcross }
 vs. }
 Board of Medical Examiners. }

Nature of Action—Application for writ of mandate.

Court Where Commenced—Supreme Court.

Date of Hearing—Alternative writ of mandate issued October 9, 1890. Writ quashed October 13, 1890. Alternative writ issued October 13, 1890. Motion to quash petition filed October 14, 1890.

Date of Rendition of Judgment and for Whom—Motion to quash petition granted October 15, 1890.

Name of Attorneys—Elbert D. Weed for petitioner; H. J. Haskell for resistant.

PARTIES TO ACTION.

State of Montana, Respondent,
vs.

Napoleon Chandonnette.

Nature of Action—Crime against nature.

Court Where Commenced—District Court Second Judicial District of Silver Bow County.

Date of Hearing—November 24, 1890. Motion by Attorney General to strike out part of record submitted November 25, 1890. Motion granted.

Date of Rendition of Judgment and for Whom—Judgment of lower court affirmed December 1, 1890.

Name of Attorneys—Charles O'Donnell for appellant; H. J. Haskell for the State.

PARTIES TO ACTION.

William H. Vennedy
vs.

State of Montana, Resistant.

Nature of Action—Application for writ of habeas corpus.

Court Where Commenced—Supreme Court, in chambers.

Date of Hearing—November 16, 1890.

Date of Rendition of Judgment and for Whom—November 16, 1890. Judgment of the court that prisoner be remanded.

Name of Attorneys—F. W. Cole for applicant; H. J. Haskell for the State.

PARTIES TO ACTION.

Charles Maguire,
vs.

State of Montana, Resistant.

Nature of Action—Application for a writ of habeas corpus.

Court Where Commenced—Supreme Court of Montana.

Date of Hearing—December 21, 1889.

Date of Rendition of Judgment and for Whom—December 21, 1889. Judgment of court that prisoner be remanded.

Name of Attorneys—John S. Miller for applicant; H. J. Haskell for resistant.

PARTIES TO ACTION.

Dennis Page

vs.

State of Montana, Resistant.

Nature of Action—Application for a writ of habeas corpus.

Court Where Commenced—Supreme Court of Montana.

Date of Hearing—November 23, 1890.

Date of Rendition of Judgment and for Whom—November 23, 1890. Judgment of the court that prisoner be remanded.

Name of Attorneys—George Haldorn and F. T. McBride for petitioner; H. J. Haskell for resistant.

PARTIES TO ACTION.

F. J. Lackey

vs.

State of Montana, Resistant.

Nature of Action—Application for writ of habeas corpus.

Court Where Commenced—Supreme Court of Montana.

Date of Hearing—November 23, 1890.

Date of Rendition of Judgment and for Whom—November 23, 1890. Judgment of court, that prisoner be remanded.

Name of Attorneys—George Haldorn and F. T. McBride for petitioner; H. J. Haskell for resistant.

In the District Court First Judicial District, Lewis and Clarke County:

PARTIES TO ACTION.

E. S. Kellogg, Appellant,

vs.

Board of Medical Examiners of
Montana, Respondent.

October 9, 1890, statement filed.

October 10, 1890, bond in the sum of ——— filed.

November 7, 1890, copy of proceedings of Medical Board filed.

December 13, 1890, motion for order of court filed.

December 22, 1890, motion for order of court sustained and filed.

December 22, 1890, order of court to board to issue certificate filed.

Name of Attorneys—Kinsley and Knowles for appellant; H. J. Haskell and C. B. Nolan, County Attorney, for respondent.

Thomas D. Penry served as judge pro tempore.

In the matter of the Application of
Samuel W. Minshall for a Certificate to Practice Medicine and Surgery in the State of Montana.

Applicant appeals to the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clarke.

October 22, 1890, notice of appeal filed.

December 22, 1890, affidavit of S. W. Minshall filed.

December 22, 1890, motion for judgment in favor of appellant filed.

Motion granted December 29, 1890.

Name of Attorneys—Brantley & Scharnikow for appellant; Henri J. Haskell for the medical board.

Applicant appeals to the District Court of the First Judicial District of the State of Montana, in and for Lewis and Clarke County.

In the Matter of the Application of
Archibald C. Stoddard to the Board of Medical Examiners of Montana Territory for a Certificate to Practice Medicine and Surgery in Montana.

October 3, 1889, notice of appeal filed.

November 23, 1889, affidavit for change of venue filed.

November 23, 1889, motion on change of venue filed.

November 25, 1889, motion on change of venue overruled, filed.

July 14, 1890, transcript filed.

October 10, 1890, motion for an order directing judgment on appeal filed.

November 26, 1890, motion for judgment in favor of appellant filed.

November 26, 1890, opinion of court filed.

November 26, 1890, ent. judgment favor of appellant filed.

November 26, 1890, ent. stay of proceedings for five days filed.

Names of Attorneys—McBride and Haldorn for appellant; Henri J. Haskell for the Medical Board.

In the District Court First Judicial District, Lewis and Clarke County:

In the Matter of the Application of Joseph Weyerhorst to the Board of Medical Examiners of Montana Territory, for a Certificate to Practice Medicine and Surgery in Montana.

October 3, 1889, notice of appeal filed.

November 23, 1889, affidavit for change of venue filed.

November 23, motion for change of venue filed.

November 25, motion for change of venue overruled filed.

July 14, 1890, transcript filed.

Name of Attorneys—McBride and Haldorn for appellant; Henri J. Haskell for the Medical Board.

In the District Court First Judicial District, Lewis and Clarke County, In the Matter of the Revocation of the Certificate to Practice Medicine Issued to Carl Schultz.

July 17, 1890, notice of appeal filed.

July 17, 1890, transcript filed.

November 25, 1890, ent. appearance of Toole and Wallace for Schultz.

November 26, 1890, motion for judgment for appellant filed.

November 28, 1890, motion for judgment sustained filed.

November 28, 1890, judgment favor of Schultz filed.

November 28, 1890, transcript for Medical Board filed.

November 28, 1890, notice of appeal filed.

Name of Attorneys—Toole and Wallace for the appellant; Henri J. Haskell for the Medical Board.

In the District Court First Judicial District, Lewis and Clarke County.

PARTIES TO ACTION.

Carlton V. Norcross, Appellant,
vs.
Board of Medical Examiners, Respondent.

December 22, 1890, transcript on appeal filed.

December 22, 1890, notice of appeal filed.

December 22, 1890, motion for judgment by appellant filed.

December 29, 1890, motion of appellant for judgment and

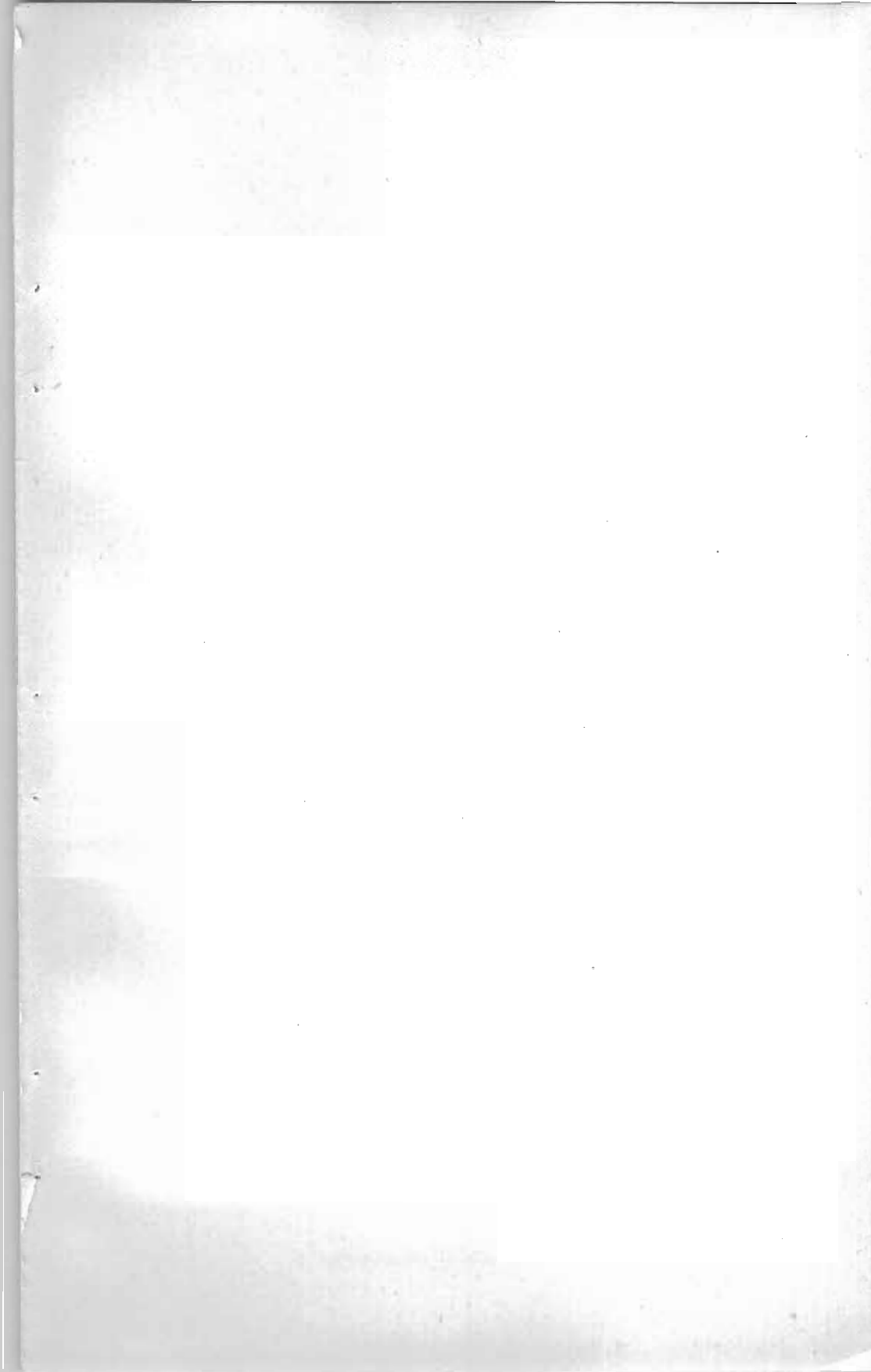
order of court to compel respondent to issue to appellant certificate to practice granted.

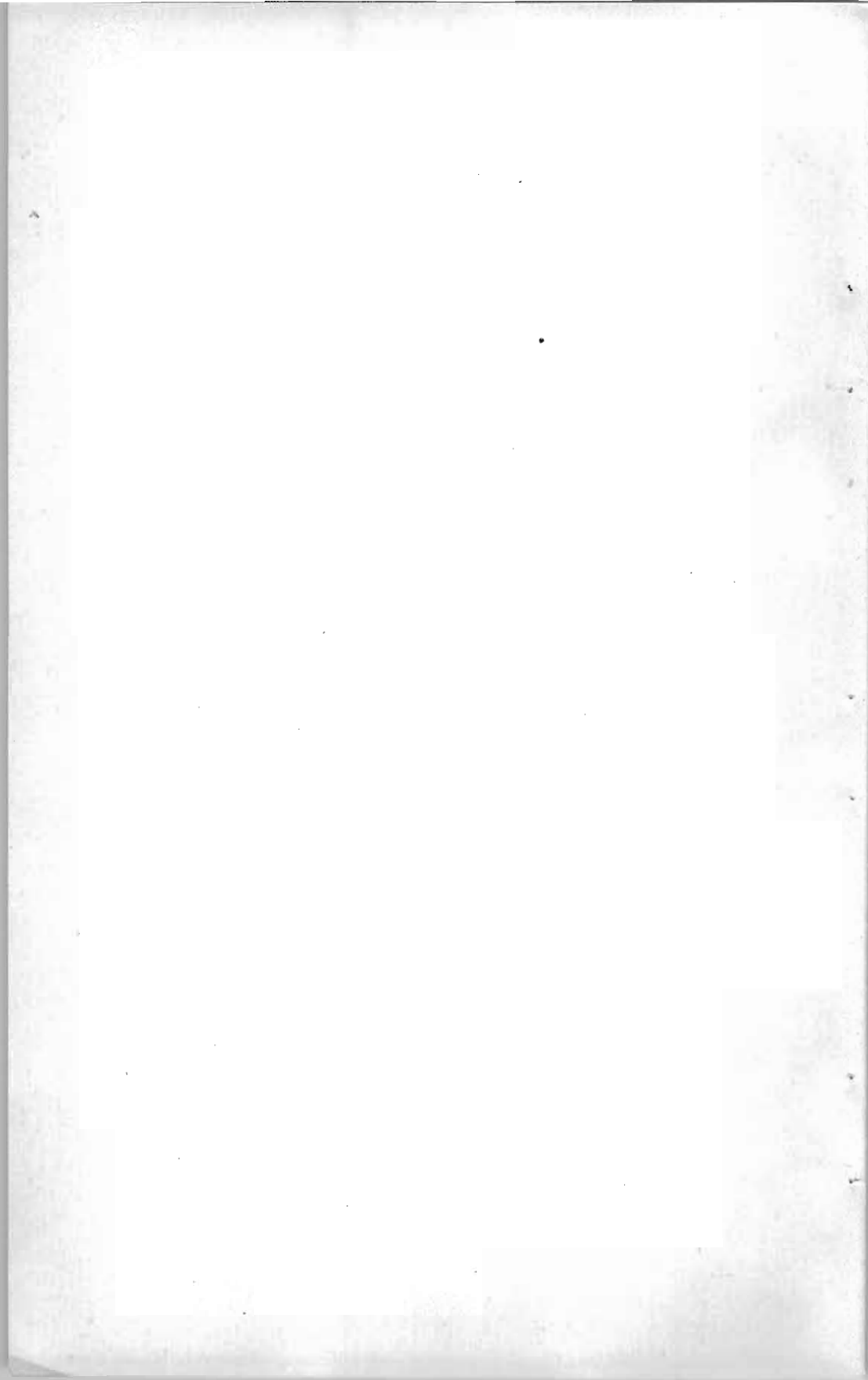
December 31, 1890, notice of appeal to Supreme Court filed.

Name of Attorneys—E. D. Weed attorney for applicant; H. J. Haskell and C. B. Nolan attorneys for resistant.

TABLE SHOWING THE EXPENSES INCURRED BY THE ATTORNEY GENERAL BETWEEN THE 13TH DAY OF NOVEMBER, 1889, AND THE 31ST DAY OF DECEMBER, 1890.

FROM WHOM OBTAINED.	WHEN OBTAINED.	FOR WHAT EXPENSE WAS INCURRED,	VALUE.	WHEN PAID.	NOT PAID FOR WANT OF AN APPROPRIATION.	REMARKS.
	December 6, 1889 ..	Office expenses, stamps	\$ 5 00	December 6, 1889 ..		By warrant.
	March 8, 1890	Office expenses Attorney General, trip of self and witnesses to Great Falls, Section 16	42 65	March 8, 1890		By warrant.
	March 26, 1890	Office expenses Attorney General, stamps, \$1; carriage to Hilger's ranch, Section 36, \$3	9 00	March 26, 1890		By warrant.
James McDonald	March 31, 1890	Services as janitor	8 00	April 1, 1890		By warrant.
C. F. Booth	May 5, 1890	Certified copy of bond of H. C. Kessler	2 50	May 17, 1890		By warrant.
	May 12, 1890	Office expenses Attorney General, stamps	5 00	May 17, 1890		By warrant.
	June 2, 1890	Traveling expenses Attorney General case of Kenney vs. Patterson at Bozeman	5 25	June 2, 1890		By warrant.
James McDonald	July 1, 1890	Services as janitor	45 00	July 1, 1890		By warrant.
	August 1, 1890	Postage stamps	5 00	August 2, 1890		By warrant.
Ross and Teutenberg	April 1, 1890	Office expenses Attorney General, sign	2 50	May 3, 1890		By warrant.
	September 20, 1890 ..	Postage stamps	5 00	September 20, 1890 ..		By warrant.
James McDonald	October 1, 1890	Services as janitor	45 00	October 1, 1890		By warrant.
A. M. Roberts	October 2, 1890	Services as clerk	100 00	October 2, 1890		By warrant.
	October 15, 1890	Expenses in case of Kenney vs. Kessler	5 25	October 18, 1890		By warrant.
Journal Publishing Co ..	December 11, 1890 ..	Supplies Attorney General	5 00		Not paid ..	
Journal Publishing Co ..	December 6, 1890 ..	One letter file	90		Not paid ..	
Journal Publishing Co ..	August 4, 1890	One sponge cup	15		Not paid ..	
	December 12, 1890 ..	Postage stamps	5 00	December 15, 1890 ..		By warrant.
Journal Publishing Co ..	June 11, 1890	Repairing typewriter	5 00		Not paid ..	
Journal Publishing Co ..	June 11, 1890	One ribbon for type writer	1 00		Not paid ..	
Journal Publishing Co ..	June 16, 1890	500 envelopes	3 00		Not paid ..	
Journal Publishing Co ..	September 23, 1890 ..	500 envelopes	3 50		Not paid ..	
Journal Publishing Co ..	October 18, 1890	Webster's International Dictionary	10 50		Not paid ..	
Journal Publishing Co ..	December 28, 1890 ..	500 envelopes	3 00		Not paid ..	
Journal Publishing Co ..	December 28, 1890 ..	500 letter heads	3 50		Not paid ..	
Journal Publishing Co ..	December 28, 1890 ..	500 envelopes	4 00		Not paid ..	





Second and Third Annual Report

OF THE

ATTORNEY GENERAL

OF THE

STATE OF MONTANA.

TO HIS EXCELLENCY, JOSEPH K. TOOLE, GOVERNOR OF MONTANA.

DECEMBER 1, 1892.

Second and Third Annual Report

OF THE

ATTORNEY GENERAL

Second and Third Annual Report
OF THE
ATTORNEY GENERAL
OF THE
STATE OF MONTANA.

OFFICE OF ATTORNEY GENERAL, }
HELENA, MONTANA, Dec. 1, 1892. }

To His Excellency, Joseph K. Toole, Governor of Montana:

In accordance with the expressed provisions of the law and the Constitution of Montana, I submit this the second and third annual report of our official acts and matters relating to the office of Attorney General from December 31, 1890, to December 1, 1892.

We have followed the rule adopted by this department in our first annual report, and included therein the list of cases decided in the several courts, wherein we have appeared in an official capacity. We have also embodied herein a synopsis of the rulings made by this department upon subjects submitted thereto for our construction thereon.

The duties that are necessarily imposed upon this department under the provisions of the law and the Constitution, are such that in order to keep it up, this office should be provided with an Assistant Attorney General and a clerk; and in this connection we note that this department has given personal attention to forty cases heard in the Supreme Court during the two years last past, and as well prepared contests in twelve land cases in the local land office of the State of Montana, and which have been appealed to the General Land Commissioner at Washington, which in themselves necessitate a great deal of attention. Nearly all of these land cases are now pending either in the local land

office of the United States in Montana, or before the Commissioner of the General Land Office or Secretary of the Interior at Washington. Some of these cases, notably two at Great Falls, involve the title to school lands which are worth at least \$300,000, and unless this department can be granted such assistance as we herewith request, very many of the duties which necessarily devolve upon this department must be neglected.

We do not anticipate that the Legislature will neglect or refuse to furnish a department proper assistance when the matter shall have been brought to their consideration; and at this time we unhesitatingly assert that the public service demands such assistance, and that without it very many of the duties which devolve direct upon this department must be neglected for want of time to perform them.

Appended to this report is an account of expenditures and disbursements of this department for the fiscal years ending December 1, 1891, and December 1, 1892. The appropriation made for this department is inadequate and we would recommend that the appropriation be increased to \$500.

The decisions by this department upon questions submitted to us under the Registration and Australian laws lead us to suggest the following changes in the Registration law:

1. That the County Clerk of each county keep on file in his said office a book to be called the "Great Register."

2. In such "Great Register," the clerk shall be required to enter the names of the qualified electors of the county, so that such book would show:

- (a) The name, at length, with the surname first.
- (b) The age, omitting fractions of years.
- (c) The place of nativity or where born.
- (d) The place of residence (giving the room, house, ward or precinct).
- (e) If naturalized, the time and place of naturalization.
- (f) The date of entry.

3. The assessor at the time when he assesses the property should obtain from each resident of his county, a statement under oath setting forth such facts as would furnish to the County Clerk sufficient information to authorize him to insert the elector's name in the "Great Register" and to complete and fill out the same.

4. Such registration should continue for ten years.

5. It should be the duty of the Board of County Commissioners to carefully examine said "Great Register" at least thirty days before any general election to the end that the names of all persons thereon registered, who are dead or removed from the county, or become insane or convicted of a crime, shall be cancelled.

6. That the County Clerk should prepare for the judges of election of each precinct a "Precinct Register," at least ten days before any general election, in which shall be included the name of every elector, whose name appears on the "Great Register."

7. In case that an elector who is entitled to be registered, but was not registered prior to the printing of said "Precinct Registers," he should be entitled to have his name placed upon the "Great Register" by the clerk of the county, and receive a certificate therefrom, which should show the facts as they appear upon the "Great Register;" which certificate might be presented by the elector to the judges of election on election day and by them taken up and upon proof that the person presenting the same, was the party named in such certificate, should be entitled to vote the same as though his name appeared upon the "Great Register" and "Precinct Register."

A modification of the Registration law to the extent that we have suggested, would save to the electors a great deal of time and expense, and would, in my judgment, preserve the purity of the ballot and throw greater safe guards around the ballot box than are granted by the provisions of the present Registration law. The inconvenience to the elector to register under the present Registration law, is not in my judgment, inconsiderable.

Our attention has been called to the fact that the county commissioners of some of the counties in the State have failed to levy a "stock inspector and detective tax," and notably in counties which are directly benefitted therefrom. We would suggest that this law be repealed or else suitable legislation be framed which will require the County Attorney of each county under severe penalties to cause this law to be enforced. It is unjust that one county should be taxed for the benefit of the many. Officially submitted,

H. J. HASKELL,
Attorney General.

List of Cases in Which the State of Montana Was a Party
and the Attorney General Attorney or of Counsel,
From January 1, 1891, to December 1, 1892.

In the Supreme Court of the State of Montana:

In the Matter of the Application of A. C. Burton for a Writ of Habeas Corpus and Certiorari, Appellant,	} Parties to Action.
vs.	
The State of Montana, Respond- dent.	

Nature of Action—Writ of certiorari to review proceedings had in lower court.

Date of Hearing—Case submitted without argument January 23, 1891.

Date of Rendition of Judgment and for Whom—Order of court January 26, 1891, that prisoner be released.

Name of Attorneys—A. P. Brown for appellant; H. J. Haskell for respondent.

In the Supreme Court of State of Montana:

The State of Montana, Respond- ent,	} Parties to Action.
vs.	
William Fry, Apellant.	

Nature of Action—Convicted of robbery; appeal from Third Judicial District, Deer Lodge county.

Date of Hearing—January 14, 1891, at 10 a. m.

Date of Rendition of Judgment and for Whom—February 16, 1891; judgment affirmed.

Name of Attorneys—John Duffy for appellant; H. J. Haskell for respondent.

In the Supreme Court of the State of Montana:

The State of Montana ex rel. Decius S. Wade, Petitioner.	} Parties to Action.
vs.	
Edwin A. Kenney, State Auditor of Montana, Respondent.	

Nature of Action—Application for peremptory writ of man-

damus to obtain warrant for services rendered the State as one of the code commissioners.

Date of Hearing—Case submitted March 12, 1891.

Date of Rendition of Judgment and for Whom—March 13, 1891; peremptory writ to issue.

Name of Attorneys—B. P. Carpenter and F. W. Cole for petitioner; H. J. Haskell for respondent.

In the Supreme Court of the State of Montana:

The State of Montana ex rel. the Journal Publishing Company, Petitioner,	} Parties to Action.
vs.	
Edwin A. Kenney, State Auditor, Respondent.	

Nature of Action—Alternative writ of mandate to obtain warrant for services rendered the territory and State for printing, in the sum of \$7,909.93.

Date of Hearing—March 20, 1891; case argued and submitted.

Date of Rendition of Judgment and for Whom—March 28, 1891; alternative writ to issue.

Name of Attorneys—McCutcheon & McIntyre for appellants; H. J. Haskell for respondent.

In the Supreme Court of the State of Montana:

E. B. Waterbury, Appellant,	} Parties to Action.
vs.	
Board of County Commissioners of Deer Lodge County, Re- spondent.	

Nature of Action—Action against the county as garnishee; appeal from Third Judicial District, Deer Lodge county.

Date of Hearing—June 4, 1891, at 10 a. m.

Date of Rendition of Judgment and for Whom—June 15, 1891; judgment reversed.

Name of Attorneys—H. J. Haskell and W. S. Shaw for respondent; George B. Winston for appellant.

In the Supreme Court of the State of Montana:

The State of Montana, Respond- ent,	} Parties to Action.
vs.	
Napoleon Chandonnette, Appel- lant.	

Nature of Action—Crime against nature; appeal from Second Judicial District, Silver Bow county.

Date of Hearing—June 5, 1891; submitted on motion and briefs of respondent to "strike out" certain parts of record.

Date of Rendition of Judgment and for Whom—June 8, 1891; judgment affirmed.

Name of Attorneys—H. J. Haskell and John T. Baldwin for respondent; Charles O'Donnell for appellant.

In the Supreme Court of the State of Montana:

The State of Montana, ex rel.	}	Parties to Action.
Fletcher Maddox, Relator,		
vs.		
Edwin A. Kenney, State Auditor,		
Respondent.		

Nature of Action—Application for alternative writ of mandate to obtain warrant for services rendered the State as reporter of Supreme Court.

Date of Hearing—June 2, 1891; submitted on briefs.

Date of Rendition of Judgment and for Whom—June 2, 1891; writ to issue.

Name of Attorneys—Thomas C. Bach for appellant; H. J. Haskell for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, ex rel. W.	}	Parties to Action.
M. Blackford, Relator,		
vs.		
Edwin A. Kenney, State Auditor,		
Respondent.		

Nature of Action—Application for peremptory writ of mandate to obtain warrant for services rendered the State as clerk of the code commission.

Date of Hearing—Submitted on briefs April 4, 1891, and taken under advisement.

Date of Rendition of Judgment and for Whom—April 13, 1891; writ denied.

Name of Attorneys—W. M. Blackford in person and Steve Carpenter for relator; H. J. Haskell for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, ex rel.	}	Parties to Action.
Horace R. Buck, Relator,		
vs.		
R. O. Hickman, State Treasurer,		
Respondent.		

Nature of Action—Application for peremptory writ of mandate to obtain the payment of a warrant for services rendered as

Judge of the District Court of the First Judicial District of this State.

Date of Hearing—

Date of Rendition of Judgment and for Whom—April 13, 1891; writ to issue.

Name of Attorneys—B. P. Carpenter for appellant; H. J. Haskell for respondent.

In the Supreme Court of the State of Montana:

Edward Carron, Respondent,

vs.

Thomas Clark et al., Appellant.

} Parties to Action.

Nature of Action—An action against the Board of County Commissioners for unlawfully opening a public highway; appeal from Fourth Judicial District, Missoula county.

April 21, transcript filed.

Appellant files briefs.

Name of Attorneys—H. J. Haskell for appellant.

In the Supreme Court of the State of Montana:

State of Montana, Respondent,

vs.

Albert Kingsley, Appellant.

} Parties to Action.

Nature of Action—Convicted of the crime of grand larceny; appeal from Third Judicial District, Deer Lodge county, from an order denying defendant's motion in arrest of judgment. Counsel for appellant files motion to amend transcript.

Date of Hearing—June 4, 1891; submitted on briefs.

Date of Rendition of Judgment and for Whom—June 30, 1891; judgment reversed; cause remanded, with direction to grant the motion in arrest of judgment.

Name of Attorneys—Edward Sharnikow for appellant; H. J. Haskell for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, Respondent,

vs.

Geo. F. Thompson, Appellant.

} Parties to Action.

Nature of Action—Convicted of the crime of rape; appeal from the Fifth Judicial District, Jefferson county.

Date of Hearing—June 16, 1891, Tuesday, at 10 a. m.

Date of Rendition of Judgment and for Whom—July 13, 1891; judgment affirmed.

Name of Attorneys—Word & Smith and H. P. Melton for appellant; H. J. Haskell and H. J. Burleigh for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, Respondent,	} Parties to Action.
vs.	
Carl A. Shultz, Appellant.	

Nature of Action—Indictment for practicing medicine without a certificate from the State Board of Medical Examiners; appeal from the Second Judicial District of Silver Bow county.

Date of Hearing—November 17, 1891, at 10 a. m.

Date of Rendition of Judgment and for Whom—January 11, 1892; judgment reversed.

Name of Attorneys—George Haldorn and Toole & Wallace for appellant; H. J. Haskell, George W. Stapleton and John F. Baldwin for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, Respondent,	} Parties to Action.
vs.	
Joseph Weyerhorst, Appellant.	

Nature of Action—Indictment for practicing medicine without a certificate from the State Board of Medical Examiners; appeal from Second Judicial District, Silver Bow county.

Date of Hearing—November 17, 1891, at 10 a. m.

Date of Rendition of Judgment and for Whom—January 11, 1892; judgment reversed.

Name of Attorneys—George Haldorn for appellant; H. J. Haskell, John F. Baldwin and George W. Stapleton for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, Appellant,	} Parties to Action.
vs.	
August Biesman, Respondent.	

Nature of Action—Action on a statutory bond on appeal from Third Judicial District, Deer Lodge county.

Date of Hearing—

Date of Rendition of Judgment and for Whom—March 28, 1892; judgment reversed.

Name of Attorneys—H. J. Haskell for appellant; J. R. Boardman and Word & Smith for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, Appellant,	} Parties to Action.
vs.	
Dennis Lenehan, Respondent.	

Nature of Action—Malicious mischief; appeal from Sixth Judicial District, Park county.

Date of Hearing—June 30, 1891; appeal dismissed.

Name of Attorneys—A. R. Joy and H. J. Haskell for appellant; Savage & Day for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, Respondent,	} Parties to Action.
vs.	
William J. Roach, Appellant.	

Nature of Action—Convicted of robbery; appeal from Second Judicial District, Silver Bow county.

Date of Hearing—October 17, 1891, at 10 a. m.

Date of Rendition of Judgment and for Whom—November 23, 1891; judgment affirmed.

Name of Attorneys—Chas. O'Donnell for appellant; H. J. Haskell for respondent.

In the Supreme Court of the State of Montana:

It the Matter of the Application of A. J. McMillan for a Writ of Mandamus, Appellant,	} Parties to Action.
vs.	
James G. Ramsey, Clerk of District Court, Dawson County, Respondent.	

Nature of Action—Application for a writ of mandate to obtain a certificate for mileage when appearing as a witness; appeal from Seventh Judicial District, Dawson county.

Date of Hearing—November 20, 1891; argued and submitted.

Date of Rendition of Judgment and for Whom—November 30, 1891; judgment affirmed.

Name of Attorneys—McConnell & Clayberg for appellant; H. J. Haskell and Thos. C. Holmes for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, Appellant,	} Parties to Action.
vs.	
George Myers et al., Respondents.	

Nature of Action—Assault and battery; appeal from Fifth Judicial District, Madison county.

Date of Hearing—November 24, 1891.

Date of Rendition of Judgment and for Whom—December 21, 1891; judgment affirmed.

Name of Attorneys—H. J. Haskell and W. A. Clarke for appellant; J. H. Duffy for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, Appellant,	}	Parties to Action.
vs.		
Richard Keif, Respondent.		

Nature of Action—Indicted for grand larceny; appeal from Seventh Judicial District, Dawson county.

Date of Hearing—November 12; submitted; taken under advisement.

Date of Rendition of Judgment and for Whom—April 18, 1892; judgment reversed.

Name of Attorneys—H. J. Haskell and Strevell & Porter for appellant; Middleton & Light for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, ex rel.	}	Parties to Action.
H. B. Palmer, Petitioner,		
vs.		
R. O. Hickman, State Treasurer, Respondent.		

Nature of Action—Application for writ of mandate to compel the State Treasurer to pay interest on State warrants.

October 9, 1891, dismissed on motion of counsel for petitioner.

Name of Attorneys—Cullen, Sanders & Shelton for petitioner; H. J. Haskell for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, Respondent,	}	Parties to Action.
vs.		
William Sherin, Appellant.		

Nature of Action—Indictment for crime of assault with intent to commit murder; appeal from Second Judicial District, Silver Bow county.

Date of Hearing—April 20, 1891; submitted on briefs.

Date of Rendition of Judgment and for Whom—November 28, 1892; judgment affirmed.

Name of Attorneys—Corbett & Welcome for appellant; H. J. Haskell and John F. Baldwin for respondent.

In the Supreme Court of the State of Montana:

E. H. Becker, Appellant,	}	Parties to Action.
vs.		
The Board of Commissioners of Yellowstone County, Respondent.		

Nature of Action—Action against the county to recover for

the publication of a copy of the proposed constitution; appeal from Seventh Judicial District, Yellowstone county.

Date of Hearing—December 31; argued and submitted.

Date of Rendition of Judgment and for Whom—January 25, 1892; judgment affirmed.

Name of Attorneys—O. F. Goddard for appellant; H. J. Haskell and Jas. P. Goss for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, Respondent,	} Parties to Action.
vs.	
Hermann Levy, Appellant.	

Nature of Action—Indictment for violation of gambling law; appeal from Second Judicial District Court, Silver Bow county; defendant admitted to bail pending the appeal.

Date of Hearing—February 23, 1892; continued for term.

Attorney for defendant filed notice and suggested death of defendant. May 9, 1892, defendant's attorney filed motion to dismiss the appeal. Motion granted and bail released.

Name of Attorneys—Thomas Campbell for appellant; H. J. Haskell for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, Appellant,	} Parties to Action.
vs.	
Thomas Herron, Respondent.	

Nature of Action—Convicted of crime of assault with deadly weapon; appeal from Third Judicial District, Deer Lodge county.

Date of Hearing—April 20, 1892; submitted on briefs.

Date of Rendition of Judgment and for Whom—May 2, 1892; judgment reversed.

Name of Attorneys—W. S. Shaw, H. S. Titus and H. J. Haskell for appellant; H. P. Whitehill for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, ex rel.	} Parties to Action.
H. B. Palmer, Petitioner,	
vs.	
R. O. Hickman, State Treasurer, Respondent.	

Nature of Action—Application for a writ mandate to compel the State Treasurer to pay interest on State warrants; motion filed to strike out part of respondent's answer.

Date of Hearing—January 18, 1892; argued; February 8, motion sustained.

Case tried to the court without a jury and taken under advisement.

Name of Attorneys—Cullen, Sanders & Shelton for petitioner; H. J. Haskell for respondent.

In the Supreme Court of the State of Montana:

Geo. W. Newkirk, Appellant,	} Parties to Action.
vs.	
Board of County Commissioners	
of Silver Bow County, Respondent.	

Nature of Action—Action against the county commissioners for disallowance of account; appeal from the Second Judicial District, Silver Bow county.

Date of Hearing—January 13, 1892; transcript filed.

Name of Attorneys—John B. Welcome and T. J. Walsh for appellant; H. J. Haskell and John F. Baldwin for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, ex rel.	} Parties to Action.
Fletcher Maddox, Petitioner,	
vs.	
Edwin A. Kenney, State Auditor, Respondent.	

Nature of Action—Application for alternative writ of mandate to obtain warrant for services rendered the State as reporter of the Supreme Court.

Date of Hearing—February 10, 1892; argued and submitted.

Date of Rendition of Judgment and for Whom—February 15, 1892; writ to issue.

Name of Attorneys—Thompson & Maddox for petitioner; H. J. Haskell for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, Respondent,	} Parties to Action.
vs.	
W. H. Linebarger, Appellant.	

Nature of Action—Assault with intent to kill; appeal from Tenth Judicial District, Fergus county.

Date of Hearing—May 17, 1892; submitted on briefs.

Date of Rendition of Judgment and for Whom—May 31, 1892; judgment affirmed.

Name of Attorneys—Toole & Wallace for appellant; H. J. Haskell for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, Appellant, }
 vs. } Parties to Action.
 Henry Fournier, Respondent. }

Nature of Action—Crime of embezzlement; appeal from Third Judicial District, Deer Lodge county.

Date of Hearing—April 20; submitted on briefs.

Date of Rendition of Judgment and for Whom—May 2, 1892; judgment reversed.

Name of Attorneys—H. J. Haskell and W. S. Shaw for appellant; Theodore Brantley for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, Appellant, }
 vs. } Parties to Action.
 Geo. W. Raymond, Respondent. }

Nature of Action—Violation of gambling law; appeal from First Judicial District, Lewis and Clarke county.

Date of Hearing—March 9, 1892; argued and submitted.

Date of Rendition of Judgment and for Whom—April 18, 1892; judgment affirmed.

Name of Attorneys—Rufus Garland for appellant; H. J. Haskell and C. B. Nolan for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, Respond- }
 ent, } Parties to Action.
 vs.
 Thomas Ryan, Appellant. }

Nature of Action—Indictment for burglary; appeal from the Eighth Judicial District, Cascade county.

Date of Hearing—April 20, 1892; submitted without argument.

Date of Rendition of Judgment and for Whom—Judgment reversed; cause remanded.

Name of Attorneys—John A. Hoffman for appellant; H. J. Haskell for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, Respond- }
 ent, } Parties to Action.
 vs.
 Thomas Dugan, Appellant. }

Nature of Action—Indictment for burglary; appeal from Eighth Judicial District, Cascade county.

Date of Hearing—April 20; submitted without argument.

Date of Rendition of Judgment and for Whom—June 6; judgment reversed; cause remanded.

Name of Attorneys—John A. Hoffman for appellant; H. J. Haskell for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, ex rel. L.	} Parties to Action.
C. Hotchkiss, Appellant,	
vs.	
J. E. Marrion et al., Respondents.	

Nature of Action—Application for writ of injunction to enjoin the county commissioners from issuing bonds for the redemption of outstanding bonds and outstanding county warrants, upon the ground that such warrants had the effect to incur a debt or liability; appeal from Fourth Judicial District, Missoula county.

Date of Hearing—Submitted on briefs; taken under advisement.

Date of Rendition of Judgment and for Whom—April 18; judgment affirmed.

Name of Attorneys—McConnell, Clayberg & Gunn for appellant; H. J. Haskell and F. C. Webster for respondent.

In the Supreme Court of the State of Montana:

In the Matter of the Application of Joseph Kelly for a Writ of Certiorari	} Parties to Action.
vs.	
The State of Montana, Respondent.	

Nature of Action—Crime of burglary; application for writ of certiorari to review proceedings of the court below.

March 19, order of Judge Blake filed; writ to issue.

April 2, order of court filed discharging prisoner.

Name of Attorneys—E. L. Knowles for appellant; H. J. Haskell for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, ex rel.	} Parties to Action.
Fletcher Maddox, Petitioner,	
vs.	
Edwin A. Kenney, State Auditor,	
Respondent.	

Nature of Action—Application for alternative writ of mandate to compel the State Auditor to issue warrant in payment of Vol. 10, Supreme Court reports.

Date of Hearing—February 10, 1892; argued and submitted.

Date of Rendition of Judgment and for Whom—February 15; writ to issue.

Name of Attorneys—Thompson & Maddox for petitioner; H. J. Haskell for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, Respondent,

vs.

Samuel S. Smith, Appellant.

} Parties to Action.

Nature of Action—Assault with deadly weapon with intent to commit murder; appeal from Ninth Judicial District, Gallatin county.

Date of Hearing—June 17, 1892; argued and submitted.

Date of Rendition of Judgment and for Whom—July 25, 1892; judgment affirmed.

Name of Attorneys—E. P. Cadwell, Toole & Wallace for appellant; H. J. Haskell and Jas. R. Goss for respondent

In the Supreme Court of the State of Montana:

The State of Montana, ex rel.
Louis Shapley,

vs.

The Board of County Commissioners of Yellowstone County,
Respondent.

} Parties to Action.

Nature of Action—Application for a writ of mandate to compel the Board of County Commissioners of Yellowstone county to levy a special tax on the taxable property of School District No. 6 to pay a judgment obtained against said district by the petitioner.

Date of Hearing—September 15, 1892; case argued and taken under advisement.

Date of Rendition of Judgment and for Whom—September 27, 1892; peremptory writ to issue.

Name of Attorneys—Andrew Campbell and Elbert D. Weed for appellant; H. J. Haskell and Jas. R. Goss for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, ex rel.
Mary Gleim,

vs.

John M. Evans, Justice of the
Peace of Missoula County, Re-
spondent.

} Parties to Action.

Nature of Action—Application for a writ of certiorari to re-

quire John M. Evans, police magistrate of Missoula county, to certify to the Supreme Court all the papers and records in the case of the State of Montana vs. Mary Gleim.

October 4, 1892, application filed.

October 4, writ issued as per order of the court.

October 12, answer of respondent filed.

October 12, plaintiff files four briefs.

November —, respondent files additional return.

November —, respondent given until ——— — to file brief.

Name of Attorneys—Toole and Wallace and W. G. Murray for relator; H. J. Haskell and A. C. Webster for respondent.

In the Supreme Court of the State of Montana:

The State of Montana, ex rel.

William S. Pigott, Petitioner,

vs.

The Board of County Canvassers
of the County of Cascade, Re-
spondent.

} Parties to Action.

Nature of Action—Application for a writ of prohibition to prohibit the Board of County Canvassers from canvassing the votes cast for Charles H. Benton, nominee for District Judge in and for said county.

November 12, petition filed.

November 17, respondent files motion to quash.

November 18, case argued and submitted and taken under advisement.

November 19, motion granted and writ denied.

Name of Attorneys—A. J. Shores and Ransom Cooper for petitioner; H. J. Haskell, B. P. Carpenter and P. H. Leslie for respondent.

SYNOPSIS OF DECISIONS.

Taxes, Collection of—Deputy Tax Collector Cannot Charge Fees Without Seizure or Sale.

Where the tax collector has placed in the hands of a deputy, taxes to collect, and the parties owing the same pay the tax without suit or seizure, the deputy or person collecting the tax can only collect the penalty provided for by law.

Extra Clerk Hire—Employment of—When a Charge Against the County.

That Section 66 of the Revenue Act makes it obligatory upon the Board of County Commissioners to furnish the clerk with a book or books in which to insert a complete abstract of all mortgages, deeds of trust, contracts and all other obligations by which any debt is secured, remaining unsatisfied on the records of said office, not barred by the statutes of limitation, at 12 o'clock meridian on the first Monday in March of said year; and that in the making up and completion of said book, it imposes additional duties upon the clerk, the expense of the same must be borne by the county, and it is the duty of the Board of County Commissioners to authorize the clerk to employ a suitable person to perform such work, provided such clerk is otherwise employed.

Assessment of Property—Mortgaged.

That all property must be assessed at its full cash value, notwithstanding the fact, that the same is mortgaged and that the mortgage must be likewise assessed at its full value.

Real Estate—Taxes on, Cannot Be Cancelled.

That real estate, which includes all mineral and agricultural lands of every description, upon which final proof and payment have been made, may be taxed and that taxes assessed and levied thereon cannot be cancelled.

Poll Tax—Demand for Must be Made Before Service of Notice—Persons Liable For.

That the assessor must demand payment of poll tax of every person liable therefor, before service of notice is made upon the person or corporation employing the person liable for poll tax.

The object of Section 171 of the Revenue Law, imposes a duty upon the person or other officers or association to furnish, upon demand, to the assessor, the names of employes liable for poll tax, which information so obtained by the assessor, will enable him to make a personal demand of such employes under the provisions of Section 167 of the Revenue Law. This information having been so obtained and the demand made upon such persons who are liable for poll tax by the assessor, and their neglect or refusal after such demand to pay the poll tax, the assessor waiting a reasonable time therefor, entitles the assessor to proceed under the provisions of Sections 169, 170 and 171 of the Revenue Law.

That employes of the government on Indian reservations are not liable under the law for the payment of poll tax unless such persons exercise the right of suffrage. The exercise of such political right makes such persons citizens of the county and State and subject to the payment of a poll tax, as provided by Section 163.

General Election, When.

That in the matter of ascertaining the population of any town, city or village, in order to secure a proper collection of license taxes, the election of 1890 was a general election within the meaning of the law relative to this subject.

Assessor Not Entitled to Compensation, When.

That the County Assessor acting as a member of the Board of Appraisers, in accordance with the provisions of Section 59 of an act concerning revenue, is not entitled to any compensation for the performance of such duties.

Board of Equalization for City—Who Are, and When Convene.

The city council or board of aldermen of each incorporated city or town must, between the third Monday in July and the second Monday in August in each year, elect four of their number, and the aldermen so elected, together with the county commissioners, shall constitute a Board of Equalization, whose duty it shall be to equalize the assessments of property within the limits of the town or city, as they may deem just and equitable. That Section 60 of the Revenue Law modifies and qualifies Section 13, pages 183 and 184, Laws of the Sixteenth Session to this extent.

Bills of County Officers Allowed, When.

That the board of commissioners of the respective counties may, in their discretion, audit and adjust the accounts of all county and precinct officers, filed in pursuance of Section 965, at any regular or special meeting of the board after said account shall be filed. Section 966, Fifth Division, General Laws.

Public Printing Let—When, and Without Notice.

1. That it is the duty of the county commissioners of the several counties in the State of Montana, to contract with some newspaper of general circulation, published within the county, to do and perform all the printing with which said county may be charged.

2. That the statutes did not require the Board of County Commissioners to advertise for bids, but that the contract for the same may be let by the board without any notice being given; the fact that the statutes fix the price relieves the board from the duty of advertising for bids for the performance of this work.

3. That the Board of County Commissioners of any county have power, at any meeting, to let the contract for public printing, although the posting of a notice calling a special meeting of the board does not specify that the contract for public printing will be let.

Taxpayer, Who Is.

That a person paying a poll tax is a taxpayer within meaning of House Bill No. 61, which qualifies him, if otherwise qualified, to vote at school elections and to act as a juror.

License—Manufacturers Not Subject To.

That a shoemaker and a merchant tailor, who did not sell goods, but confined themselves to the one branch of industry of manufacturing or making thereof, come within the proviso contained in Section 1351, Fifth Division, General Laws.

Exempt From License, Who Are.

That a person who solicits orders by samples, is exempt from the payment of a license. Section 13, Act of September 14, 1887.

Registration of Voters Required, Where.

If no provisions have been made by the ordinance of a city for the registration of voters, no registration is required; for that the Registration Law of 1889 provides that nothing in said act contained shall be construed to effect the laws regulating the registration of voters in municipal elections.

Scire Facias, Writ of, Defined.

That scire facias is a judicial writ, founded upon a record, and when sought to enforce the payment of money, it must be for a specified sum, or perhaps, in addition, interest or exchange, as an incident to the debt. Such writ is abolished in this State. Section 410.

Registration of Electors Not Required, When.

That upon the submission of a question to the qualified electors of county, Section 14 of the Registration Law has no application thereto, and that registration is not essential to the enjoyment of such legal right, although at a special election held to bond the county, such election must be advertised in the form and manner provided by what is commonly known as the Australian Law.

Board of Appraisers—Powers Of.

That boards of appraisers, when performing their duties as such board under Section 58 of the act concerning revenue, fixes the valuation upon real estate only and not upon the improvements.

Letters Received by Prisoners, When.

That the sheriff has the right to make such rules and regulations as will enable him to safely guard the prisoners placed in his custody, and to that end he may forbid prisoners receiving letters unless they permit him to inspect the same.

Vacancy in Office—Absence From the State.

That absence from the State or county on business or for any other cause, during the term of office of the county officer, is not such an act in itself as will cause a vacancy in the office.

Clerk of the Supreme Court—Appropriation For.

That House Bill No. 27 has the force and effect of an appropriation and that the clerk of the Supreme Court is entitled to receive a warrant thereunder for services rendered the State as clerk of such court.

Appropriation for Members of Legislature—Form of Defined.

That a certificate signed by the speaker and chief clerk of the House of Representatives, which contains the name of the members, the amount of mileage and per diem for each member for the Second Legislative Assembly, and approved by a committee of such House of Representatives, is sufficient authority under the law and Constitution to authorize the State Auditor to draw a warrant in favor of such member without further legislation.

That Section 5, Article V. of the Constitution which fixes the compensation of members at \$6 per day, controls all future legislative assemblies until the same shall be changed by proper legislation. That the county is not required to furnish the police magistrate of a city with a justice docket, books or blanks. Section 766, Fifth Division, General Laws.

Tax Payer—Who Is.

That a tax payer within the meaning of House Bill No. 61, is one who pays a highway or poll tax.

School Moneys—Cannot be Used When.

The board of trustees of a school district cannot use the school moneys to pay the expenses incurred in a suit wherein such trustees are a party. The law does not authorize expenditures of school moneys for such a purpose.

School Trustees—Number Of.

School districts having more than 1,000 inhabitants shall elect five trustees. This act applies to the population of the district and not the area.

Poll Tax Collected—When and From Whom.

The assessor of a county can collect a poor tax from persons working on a railroad grade which is upon a right of way, where the right of way runs through an Indian reservation: For that, the United States, through and by an act of Congress, grants a right of way through, over and across all Indian reservations subject to certain conditions, restrictions and limitations; among which are the following:

1. The company must pay the Indians a fixed compensation for each acre of the reservation so taken.
2. The Indians must cede the land so taken to the United States.
3. The land must become a part of the public domain.
4. The company must covenant not to claim any part of the reservation other than that so purchased.

The ceding of this right of way by the Indians to the United States and the proclamation of the President granting a right of way to the railroad company, operates and in effect extinguishes the title of the Indians in and to the lands granted for a right of way, and the same and all thereof becomes a part of the public domain, and when such ownership is vested in the railroad company the same and all thereof may be assessed and taxed; therefore, all persons and property, being lawfully upon such right of way, may be taxed. The moment that this right of way is ceded by the Indians to the United States and by the United States granted, sold or given away to any individual, company or corporation, all such property is under and subject to the laws of the State of Montana, and the police force of the State may be enforced for its protection.

All persons working and living upon the right of way are entitled to vote, provided they come within the rule laid down in

Section 2, Article IX., of the Constitution, and cannot be disfranchised from the fact that the lands on each side of the right of way is an Indian reservation, hence the laws reserve and preserve these privileges to the residents thereon; therefore, these persons may be taxed.

License Tax—Collection Of.

The license law of March 7, 1891, limits the tax collector to the collection of licenses on omnibuses and carriages that run for hire, and that a job or express wagon is not included within the term "carriage;" that the term "carriage" includes vehicles that are used solely for the transportation and carrying for hire of persons and passengers, 8 Kansas, page 82.

Estray Law Unconstitutional—Estray Defined.

That an animal that has been raised and permitted to run upon the range and branded with a recorded brand cannot be lawfully considered "an estray," even though after carefully being examined by the inspector or district officer among reputable resident stock owners or freeholders, is found to be apparently without ownership in that locality.

Chapter XIV. of the Fifth Division, General Laws, provides for the selecting and recording of brands and marks to be placed upon stock, and the venting of an original brand is prima facie evidence of sale or transfer of the animal so vented; therefore, if an animal is found grazing upon the public domain with a brand or mark thereon, such fact is prima facie evidence that such animal is not without ownership and hence is not "an estray;" and if upon examination of the record containing the brands and marks in this State, it shall appear that such brand or mark is therein entered of record, the fact is conclusive that such animal is not "an estray," from the very fact that its owner is known and he has taken this mode and manner of advertising to the residents of this State that he is the owner of all animals bearing this brand, and such brand or mark thereon is as much a notice of ownership as though each animal had a chain or wire around its neck with a card attached thereto, that the person whose name is subscribed thereon is the owner of such animal.

Who would question the fact of ownership of an animal branded and marked with a brand recorded in the "Brand Book," and grazing upon the public domain, whose boundaries for a range shall only be limited by the State boundaries.

Our statute seeks to define what shall be "an estray" within its terms and meaning, and limits the old rule which was *Pecus vagans quid nullus petit, sequitur vel advocat.* We would, therefore define "an estray" as a wandering animal, which no one

seeks, follows or claims, and has no brand or mark thereon recorded in the record of brands and marks at the general office in Helena.

The provisions of Section 9 of an act entitled "A bill for an act with reference to estrays upon the public domain" are so limited and narrow in its definition of "estrays" that in case animals are branded, I am convinced that the courts must hold in furtherance of justice, right and equity, that so much of said section which provides that "an estray" within the meaning thereof is "An animal that, after careful inquiry by the inspector or district officer, among reputable residents and stock owners or freeholders, is found to be apparently without ownership in that locality," is in conflict with the provisions of Sections 3 and 27 of Article III. of the Constitution.

It is in conflict with and is in derogation of the provisions of Section 3, Article III., above noted, which guarantees to all citizens the inalienable right of enjoying, possessing and protecting his property.

It is inconsistent with the right delegated to each citizen as enumerated in Section 27, above referred to, in this: It deprives a person of his property without due process of law, for in itself the law is not a police regulation, it not being unlawful for stock to run at large upon the public domain.

School Election—Female Elector Defined.

A property qualification is not required of a female citizen of the United States over twenty-one years of age, and who has resided in the district one year next preceding the election, to qualify her as an elector.

Assessor—Not Allowed a Percentage, When.

The County Assessor is not entitled to any percentage from the county for the collection of poor or poll taxes, laws of 1889 and 1891.

No deductions are allowed any person in his assessments on account of bona fide debts owing by him, unless such person has solvent credits due him. The deductions of bona fide debts from the gross amount of solvent credits, include only such debts as are not secured by trust deeds, mortgages or liens upon personal or other property, and such deductions shall not exceed the amount of his debts.

County Roads—Not Maintained, When.

The Board of County Commissioners of a county have no legal right under our statutes to establish and maintain a county road upon a military or Indian reservation; *Provided, however,* That if it becomes necessary to lay out a county road over and

across an Indian or military reservation in order to reach another part of the county, and the permission first having been obtained from the departmental officers of the general government for the exercise of such right, then such road might be laid out and an expenditure of money by the county commissioners would be legal.

County Commissioner—Not Allowed Compensation, When.

That the member of the Board of County Commissioners who is ex-officio member of the Board of Appraisers under Section 58 of the Revenue Law, is not entitled to receive any compensation from the county for his services; that it would not be illegal if such board should remain in session for a longer period than eight days: *Provided*, That a longer session was necessary: *Provided, however*, That the reputable citizen so chosen could demand but eight days' compensation from the county.

Chinese—Naturalization Of.

A Chinaman can not be naturalized under the laws of the United States.

Road Districts—Designated, When.

The assessor is required to designate in the assessment book not only the school and road district, but as well the city in which each piece of property assessed is situated, and that this refers to personal property as well as real property.

Deputy County Clerk—Powers Of.

A deputy county clerk, duly appointed, has authority to do and perform any act that the clerk may do under the law, subject, however, to the orders and directions of said clerk, Sections 831 and 832, Fifth Division, General Laws. That in case of death, removal or resignation of the clerk, the deputy does not vacate his office.

Fee of County Clerk—Filing Deed.

The County Clerk is not allowed any fee for endorsing upon the deed "filed for record." The fee for filing is included in the fee for recording, hence there cannot be a separate fee demanded for the filing of the deed.

Solvent Credits Assessed—How.

Secured solvent credits must be entered upon the assessment roll by the assessor, and does not require an order or any authority from the Board of County Commissioners to enter the same thereon.

Assessments Increased—How.

Where the records of a Board of County Commissioners, sitting as a Board of Equalization, show that the board increased the assessment, and then gave notice to the taxpayer that they had raised it, such increase by the board is illegal and their order in the premises of no force or effect in law. Where the records fail to show that they first gave notice of their intention to increase the assessment of the taxpayer, then an order made in the premises increasing such assessment, without the record of such notice, is illegal.

State Board of Equalization—Assess What Property.

The State Board of Equalization assess only the franchise, roadway, roadbed, rails and rolling stock of railroads operated in more than one county in this State, while the depots, station grounds, shops and buildings erected upon the space covered by the right of way, and all other property owned or leased by the corporation, except as above provided, are assessed by the assessor of the county wherein they are situated.

Court Stenographer Must Take Testimony, When.

The court stenographer is an officer of the court, an appointee of the judge thereof, whose duties are prescribed in Chapter CXI., Compiled Statutes of 1887. Such stenographer, being an officer of the court, an appointee of the judge thereof, must perform such duties and obey such orders as the judge of the court may from time to time direct and order, and if, in the discretion of the court, an order should be made requiring the stenographer to take testimony in a referee case, it would undoubtedly be the duty of such stenographer to take such testimony in obedience to the order made, but if the court should not direct or require the stenographer to take the testimony in a referee case, a stenographer would not be required so to do under the law.

Solvent Credits—Place Where Taxed.

A mortgage which is a security for a debt has no situs separate and apart from its owner for purposes of taxation.

3 Montana, 173.

42 Conn., 435.

41 La. An., 646.

15 Wallace.

21 Vermont, 152.

68 Indiana, 254.

54 Iowa, 58.

Townships Organized, How—Officers Appointed, When.

Section 756, Fifth Division, General Laws, confers upon the Board of County Commissioners the exclusive authority to or-

ganize a municipal township in the county, designate and give a name thereto: *Provided, however,* That no new township can be organized unless a petition be first presented to the board, signed by at least fifty citizens therein, Section 757. Upon the creation or organization of a township by the Board of County Commissioners, they may appoint two constables and two justices therein without first requiring an election to be held, Section 1049.

Capital Stock of Bank—Exempt From Assessment, When.

The amount of capital stock of a bank, that is shown to have been invested in real estate, personal property, bonds or mortgages, should be deducted from the amount said bank is assessed for and on account of its capital stock. If it shall be found that the entire capital stock of the bank is represented by other property in this State that has been taxed, then there is no capital stock to be taxed, Sections 4 and 8, Revenue Law.

Fees as Clerk of Probate Court—Collected, When.

All fees which the clerk of the probate court or which the judge, acting as ex-officio clerk of his own court, could charge for clerical services rendered in any case in probate matters in his court prior to the admission of the State into the Union, is at this time a proper and legal charge for the district clerk to make in such cases, and it is his duty to charge and collect such fees and pay them over to the County Treasurer.

Five Per Cent, Defined.

The five per cent. mentioned in Section 39 of an Act entitled, "An Act to provide for the selection, location, appraisal, sale or leasing of State lands," means the price fixed by the appraisers appointed by the Board of County Commissioners, under Section 40 of said act.

Clerk of the District Court May Take Certain Fees, When.

In the matter of making final proof under the land laws of the United States, the Clerk of the District Court is required to pay over to the proper accounting officers of the county any and all sums received by him in the matter of administering oaths or attaching his seal to each paper used at the time of each hearing; that it is discretionary with him to charge for the clerical services performed by him in such cases; and that if he does not make any charges therein, he is not liable under the laws of this State now in force for a failure so to do; and that if he does make a charge in such cases, he is not liable for its non-payment or collection; neither is he responsible or liable to the county for any such sums collected for such services rendered.

Rancher Slaughtering and Selling His Own Beef—Not a Butcher.

Under Section 2 of "An Act concerning licenses," approved March 7, 1891, a person doing business as a butcher must have a shop or permanent place of business with all the necessary tools and implements suitable to the trade or occupation of a butcher, and includes the cutting up and selling by retail the carcasses of animals slaughtered by him or others.

A rancher and farmer killing and slaughtering his own stock has not such a permanent or established place of business so that he could be brought within the terms of the license law and be liable to pay a tax therefor.

Tax Levied—Cannot be Changed.

Where a Board of County Commissioners have levied a tax, and the same has been entered of record, and the board have adjourned said meeting, they have no power to subsequently alter, correct or change that levy in any way or manner whatever or at all, unless the levy of the same is clearly contrary to law or that the same can be corrected without injuring the public business. When a tax is once determined upon by the board and carried upon the books, the collection of it rests with the County Treasurer, and if it is found by him to be illegally levied and contrary to law, he is prohibited from collecting the same.

Public Printing—Contract for, How Let.

The Board of County Commissioners can let the contract for public printing without advertising and may contract for less than the legal maximum rates, which contract should include all records, books, pamphlets, printing, etc., which the county is chargeable thereby; and that the person taking the contract can collect only the amount specified therein.

Assessor Allowed Deputies, When.

The passage of "An Act concerning compensation of county, district and township officers," approved March 6, 1891, nowise restricts the power or discretion of the boards of county commissioners of the several counties in this State to allow the assessor of any county such a number of deputies, not exceeding two, as will in their judgment enable the assessor to complete the assessment within the time prescribed by law.

Fees Collected by County Cannot Be Retained.

No officer is entitled to receive or charge a fee or compensation for the performance of any additional duty, unless the authority therefor is particularly designated in the act requiring

and authorizing the performance of such duty; therefore, all fees collected and received by the treasurer under the provisions and terms of "An Act concerning revenue," must by the County Treasurer be paid into the county treasury for the use and benefit of the county.

County Clerk Must Charge Fee, When.

The Board of County Commissioners have no authority to relieve the County Clerk from the statutory requirement, which provides that he shall charge a fee for the performance of certain duties. Such order would in nowise relieve the County Clerk from the penalties imposed by the provisions of the law.

Enrollment of School Children—Who Are.

Children born of parents, the mother being a half-breed Indian and the father a white man, are considered white persons, they being at least three-fourths blood white. The blood which predominates in the offspring in law determines the race and nationality from which the children spring; therefore the children born from such a marriage should be enrolled by the clerk of a school district as scholars in his school district.

School Districts—Territory Of.

The fact that scholars living in one part of a school district are obliged to cross the territory included within the boundaries of another district, in order to attend school in the district, does not perforce of such fact create a conflict of boundaries.

Purchase of School Site—When Illegal.

The authority to purchase land for the use of a school district must be delegated to the board of trustees of the district by a vote of the qualified electors of the district so to do, and in the absence of such authority all such purchases are illegal unless subsequently ratified by the district or by an acceptance of the grant on the part of the district and the enjoyment of such right and privilege so granted.

Where a trustee of a school district purchased a building site for a school house, and at the same time was a seller, such act of the trustee would come within the provisions of Section 913, Fifth Division, General Laws, and could be vacated and set aside by a prompt proceeding in the courts, even though the authority had been delegated to the trustee to purchase a lot or lots for school purposes.

Clerk of School District—Removed, How.

The law delegating the power to the board of trustees to appoint a district clerk is mandatory, and such board cannot

exercise the functions nominated in the Montana School Law without the assistance of that officer known as "district clerk." That the power to remove a clerk is one that undoubtedly comes within that general rule of the law, which provides that the power to appoint has the power to suspend or revoke appointment at its own will and pleasure, unless otherwise provided in the law granting the appointing power.

Certificate of Authority Cannot Be Issued to Firm.

The State Auditor cannot issue a certificate of authority to a firm, which would authorize all of the parties in the firm to act as agents in the insurance company under such certificate of authority, upon the payment of the sum of \$2 therefor. The certificate of authority must be issued to an individual member of a firm.

Settlers on State Lands—Illegal to Cut Timber Thereon.

A person locating or settling upon any State lands does not acquire title thereto, and if he removes or attempts to remove any timber therefrom, or cut, fell, girdle, injure or destroy any timber thereon, he is guilty of a misdemeanor, and upon conviction thereof is subject to be fined in any sum not less than \$100 or more than \$1,000; or be imprisoned in the county jail not less than thirty days or more than six months, or both such fine and imprisonment.

County Officer—Notary Public Is Not.

A notary public is not a county or district officer, therefore he comes within the exception noted in Section 1 of House Bill No. 8, and is not required to make a quarterly report to the Board of County Commissioners.

County Bonds—County Commissioners Without a Vote of the People May Issue.

The provisions of Section 795 of the Compiled Statutes of Montana, as amended by Section 2 of an Act entitled "An Act to amend Sections 790, 795, 796 and 808 of the Fifth Division, Compiled Statutes of Montana," approved March 4, 1891, is not a limitation upon the provision of Section 808, as amended by Section 4 of the act referred to. The county commissioners of any county are authorized by said last named act to issue on the credit of their respective counties, coupon bonds to an amount sufficient to enable them to redeem any or all legal outstanding bonds, warrants or orders without submitting the question to the qualified electors of the county; and that the issuance of such bonds on the part of the Board of County Commissioners is not the incurring of any indebtedness or liability, hence

such action of the board is not in conflict with the provisions of Section 5, Article XIII., of the Constitution.

State Board of Land Commissioners—Report of County Superintendent—What to Contain, And Whom Made To.

It is the duty of each County Superintendent of Schools to make a report to the State Board of Land Commissioners on or before the first day of July in each year, which report should show:

First—The condition of the school lands located in their several counties.

Second—The number of acres thereof.

Third—The number of acres occupied by settlers.

Fourth—By whom occupied, giving the name of each settler; the legal sub-division occupied by such settler.

In giving a description of the lands under the sub-division first above noted, it is obligatory upon the county superintendent to ascertain and show to said board whether the lands are:

1. Grazing lands.
2. Timber lands.
3. Agricultural lands, or,
4. Lands lying within the limits of any town or city or within three miles of such limits, and the estimated number of acres of each class thereof.

Delinquent Tax List—Personal Property Not to be Included In.

Section 107 of the "Act concerning revenue," does not contemplate that personal property shall be included in the delinquent list of property upon which taxes remain unpaid and are delinquent. The necessity of advertising personal property upon which a tax is due and delinquent, does not exist under our Revenue Law, even if statutory license was therein granted; for the obvious reason that before personal property, upon which a tax is due, can be sold by the County Treasurer, the same must be seized and be in the constructive if not in the actual possession of the County Treasurer.

The inserting into the publication delinquent list of personal property is not only unauthorized in law, but would be of no avail even with or without such statutory authority, as the provisions of Section 134 provide the mode and manner for collecting the taxes thereon.

License in Place of Business—It is Not the Duty of the Sheriff or Constable to Require Persons to Display.

The duties of a public officer, who acts in a ministerial capacity, must be prescribed and designated by a positive provision of the

statute in order to confer authority upon him to act, or create any liability in him in case he fails to act, or act wrongfully. None can be presumed either by intendment or implication. Although the statutes require that all licenses issued by the County Treasurer shall be kept posted in a conspicuous place where the business named in such license is carried on, yet it is not the duty of the sheriff or any other officer to require persons having licenses to keep them displayed in their place of business.

Taxes, Special and General—The Treasurer Cannot Separate the Taxes, But Must Collect at the Same Time.

A special tax assessed and levied according to law becomes a part and parcel of the general tax duty assessed, and cannot by the tax collector be separated or collected separate.

Section 1906, Fifth Division, General Laws, requires the treasurer to proceed to collect the tax therein designated in the same manner and at the same time, and with the same power and authority enforce payment as in the case of county or state taxes, and is a positive inhibition upon the treasurer from separating the funds so far as their collection is in question, and it does not permit the treasurer to say that the funds shall be paid separate. The law must specially depute to the treasurer the authority to separate the several funds in the collection thereof, and the doing of such an act, in the absence of any such express authority of the law, would be malfeasance in office.

Delinquent Taxpayer—Form of Order or Notice to be Served Upon.

The tax collector may authorize some suitable and discrete person to seize a sufficient amount of personal property belonging to a taxpayer who has been assessed for personal property and who is delinquent for taxes thereon for said year, Section 9, page 225, Laws Sixteenth Session; Sections 134 to 140, "Act concerning revenue."

When property has been seized, as above provided, it is the duty of such person, so deputed to serve upon the delinquent taxpayer, a copy of an order notifying the delinquent taxpayer that his property is seized in accordance with the provisions of Section 134, to pay the tax due thereon to the State and to the county in which such property was taxed and is situated. Such property should then be turned over to the possession of the County Treasurer, and by him taken into immediate possession.

Collector of Taxes—Assessor Collects Poll Tax Only—Treasurer Is by Law..

The treasurer of each county in this State, is, by virtue of his office, collector of taxes therein; and is required to perform such

other duties as are, or may be hereafter, prescribed by law. Held, that there is no provision of the law that authorizes the assessor to collect any tax save and except the poll tax; and that Sections 158 and 203 of "An Act concerning revenue" confers no authority upon the assessor to act.

Deputies—The Commissioners Determine the Number and Fix Their Compensation—The Principal Appoints.

Section 4 of "An Act concerning compensation of county, district and township officers," approved March 6, 1891, provides, among other things, that: "The number of deputies and their compensation allowed to the county officers within the maximum limits named in said act, shall be determined by the Board of County Commissioners. The salaries therein provided for, or so much thereof as may be allowed, shall be paid by warrant drawn on the general fund of their respective counties in quarterly installments." Held that the county commissioners have exclusive authority to determine the number of deputies and fix their compensation. That the terms and provisions of such section grants a complete and specific power to the Board of County Commissioners to do and perform a particular act. It is not only declaratory in its terms, so far as it provides for the payment of salaries, but it is mandatory wherein it authorizes the Board of County Commissioners to fix the number of deputies and their compensation. The granting of such power, however, does not carry with it the power to appoint deputies. The power to appoint a deputy must rest and is always in the department under which said deputy acts and performs the duties by virtue of his appointment. Statutes of 1887.

Marriages on Reservations Must Be in Accordance With the Laws of Montana—Parties Thereto Must Procure License.

The Constitution of the State of Montana, in Article II. thereof, reserves to the State of Montana the right to serve all legal processes of the State, both civil and criminal, upon persons and property found within any of said reservations in all cases where the United States has not exclusive jurisdiction. Held, that marriage being a civil contract, to which the consent of the parties, capable in law of contracting, is essential, the execution of which must be in accordance with the provisions of Chapter LXXXV. of the General Laws of Montana. That the laws of the United States have no jurisdiction whatever over marriages performed in the State of Montana upon an Indian or military reservation in Montana, unless such marriage contract is entered into between the wards of the general government, and that a marriage performed upon an Indian reservation in Montana between persons not wards of the government, must be performed in accordance with the General Laws of Montana.

Constitutional Law—Term of County Treasurer—The Constitution is Not Retrospective and Does Not Apply to Persons Holding Office Prior to its Adoption.

Section 5 of Article XVI. of the Constitution provides, among other things, "That no person shall hold the office of County Treasurer for more than two consecutive terms." Held, that said section of the Constitution not being retrospective in its operations, has no application to a person who held the office of County Treasurer prior to the adoption thereof.

Informations—Laws Concerning the Time When They Shall Be Filed is Directory and Not Mandatory.

Section 2 of "An Act relating to information in criminal cases," approved March 2, 1891, requires, among other things, that "the County Attorney must, within thirty days after the delivery of the complaint and other papers to the proper District Court, or, after such leave, file in such court an information." Held, that such provision of said section is directory and not mandatory; but in case the County Attorney fails to file such information within thirty days, leave of the court shall be obtained to file an information against any parties where the complaint against them has been filed in the proper District Court.

Assessor—Compensation Is Granted by the State for Making Statistical Statements and Returned to State Auditor.

Chapter CX., Laws of 1887, provides that the assessor shall annually, at the time of the taking the list of personal property for taxation, take from each person, company or corporation in his own county a statistical statement in the form and manner therein provided, and that he shall transmit such statement, with a full abstract of the same, to the State Auditor on or before November 1st annually; and that each assessor shall be entitled to receive 20 cents for each blank returned to the State Auditor containing statistical information, out of the territorial treasury: Held, that the act relative to fees and compensation of county officers, approved March 14, 1889, and the act concerning compensation of county, district and township officers, approved March 6, 1891, does not affect the compensation of the assessor granted him by the provisions of Chapter CX., Laws of 1887. That the latter law provides for the performance of a particular and specific duty on the part of the assessor, which are penal in their nature; therefore, the general provisions of the laws of 1889 and 1891, relative to fees and salaries of the County Assessor, being general in their nature, are modified by the special provisions of Chapter CX., above referred to.

Assessment and Tax Defined.

Section 97 of "An Act concerning revenue," provides that the treasurer must give a receipt to the person paying any tax, specifying the amount of the assessment, and the tax paid, with a description of the property assessed: Held, that the word "assessment" must be here taken and construed according to its accepted meaning, and as it is generally understood, which is the entire assessment and not a portion of the assessment. That the County Treasurer cannot accept a part of the tax and give a receipt therefor; for that every tax has the force and effect of a judgment against the person, and every lien created by said tax has the force and effect of an execution duly levied against all personal property of the delinquent; the judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.

Publication of Delinquent Tax List—Time of Defined.

The publication of the delinquent tax list must be made once a week for three successive weeks in a newspaper published in the county as the Board of County Commissioners direct: Held, that the County Treasurer must not proceed to sell such land until seven days after the last publication of the notice of sale.

County Clerk—Fees Statutory Must be Charged and Collected By.

Section 1 of the Salary Act of 1891, declares that the fees, costs, percentages, penalties, allowances and all other perquisites of whatever kind which by law any clerk of the District Court in every county in the State, is or may hereafter be authorized to charge, receive and collect for any official services rendered by him, shall hereafter be received and collected by the said officer respectively to and for the sole use of the county treasury of his respective county as public moneys belonging to said county, and not otherwise, and shall be accounted for and paid over as such in the manner hereinafter provided: Held, that said section has not only the effect to require the clerk to charge, but to collect and receive the fees designated in the Act of 1889, and that such neglect on the part of the officer to do so, is a failure of the officer to comply with the strict requirements of the statute, the obligations of his bonds and the requirements of his oath of office.

Scab Among Sheep—Law Presumes Entire Band to be Affected.

Section 4 of "An Act to provide for the appointment of a deputy veterinary surgeon, and to suppress and prevent dissemination of scab and contagious diseases among sheep," approved

March 14, 1889, provides that upon receipt of reliable information in writing that any sheep in his county are infected with scab, or any infectious disease, or have recently been herded upon the range of, or occupied corrals which have been within the past ninety days used or occupied by any diseased or infected sheep, the deputy inspector shall immediately cause the diseased sheep, and all sheep running in the same flock with them to be examined, and if found so diseased, to be quarantined and held within the certain limit or place, to be defined by him, and such sheep shall be held in quarantine until the owner or person in charge shall have eradicated such scab or such infectious disease effectually: Held, that such section is mandatory and not directory, and that whenever the State Veterinary Surgeon or deputy inspector shall find that a band of sheep are infected with scab or any infectious disease, and the same shall have been quarantined and held within a certain limit or place defined by such veterinary surgeon or deputy inspector, the law presumes that the entire band is diseased or infected; and such presumption cannot be overturned until the owner or person in charge shall have eradicated such scab or infectious disease effectually.

Under said section the officer could not permit the owner to dispose of or permit those to run at large which, upon examination, were not shown to be diseased or infected with scab. The fact that they had mingled continuously with those that were diseased would negative the assumption that they were not diseased.

Highways—County Commissioners May Lay Out, When.

Section 1851, Revised Statutes of the United States, declares that "legislative power of every of territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States:" Held, that under a territorial form of government, the boards of county commissioners had authority to lay out roads and highways over and across the public domain in accordance with the provisions of Chapter CL, General Laws, irregardless of the fact whether the same and all thereof were public lands of the United States or lands belonging to citizens and residents of Montana.

And as such proceeding was a grant of legislative power, which in itself extended to and was a rightful subject of legislation, are not inconsistent with the Constitution and laws of the United States, the legality thereof has never been questioned.

The Constitution of the State of Montana, Section 1 of Article XX., has continued in full force said Chapter CL, the authority of the Board of County Commissioners to act in the premises has not been thereby lessened or abridged, and the right to lay out a road across lands belonging to the United States, is co-

extensive with the right to lay out a road across land belonging to the State of Montana.

Commissioner of Deeds — Powers of in State Where Commissioned.

Chapter XVI. of the Fifth Division, General Laws of the State of Montana, authorizes the Governor of this State to appoint and commission in any state or territory of the United States or the Dominion of Canada, one or more commissioners of deeds, to continue in office during the pleasure of the Governor, not exceeding the period of five years, who shall have power to administer oaths and take depositions, and the proof and acknowledgment of deeds and other instruments to be used or recorded in this State: Held, that in the absence of a special or general provision of a statute inhibiting such officers appointed from administering an oath or to take depositions and the proof and acknowledgment of deeds in any county other than the one in which such officer resides, the grant of power from the Governor of the State of Montana, under said chapter of the laws of Montana, confers upon such officer the power to take the proof and acknowledgment of deeds and other instruments to be used or recorded in Montana, in any part or portion of the state in which such person resides; and that the authority of such appointee under the commission would not be limited to the political district in which he resides.

Assessment of Estates—Not Authorized by Law.

Section 13 of "An Act concerning revenue" declares that it is the duty of the assessor to ascertain the names of all taxable inhabitants and all property in his county subject to taxation, and assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at 12 o'clock m. of the first Monday of March next preceding: Held, that an assessment against the estate of a person deceased is not warranted by the law, but that the assessment should be against the heirs of the person deceased. In case the heirs of a person deceased are Sioux Indians, who have not severed their tribal relations, are not subject to the laws of the State of Montana in the matter of assessment of their property: For that, by the treaty entered into between the United States and the Sioux Indians, the property of members of the tribe and their children, who retain their tribal relations, is exempt from taxation under its provisions.

School Districts—Creation of New Ones, When Void.

The provisions of Section 1876 of the Montana School Law provides, among other things, that unless within eight months

from the action of the commissioners establishing and creating a new school district, a school is opened therein, then their action making a new district is void, and all elections or appointments of trustees made in consequence of such action, and all rights and offices of parties so elected or appointed shall cease and determine: Where it appeared that the Board of County Commissioners had made an order creating a new school district, but no school trustees had been elected or appointed in the new school district, or that no school had been opened or taught therein since the creation of the school district by the order of the Board of County Commissioners: Held, that it was the duty of the clerk of the school district out of which the new school district was formed to list all children of the school district living in the new school district to his school district, and that in so doing, he was acting in compliance with the rules laid down in the Montana School Law.

Further held, that the action of the Board of County Commissioners in creating a new school district was void by reason of the new school district failing to open and maintain a school therein in accordance with the Montana School Law.

Highway—Damages for Laying May be Awarded, When.

The Board of County Commissioners had laid out a road along the section lines of a section, which was included in the public domain, but taken up as a homestead by a claimant who was then living upon the land, but who had not made final proof upon the same. The question arose whether the board could in such a case allow damages to claimant, or are they restricted to the allowing of damages to persons only who have a full title to the land from the government: Held, that the Legislature evidently intended to protect all persons having an interest in real estate, whether proprietary or limited to a possessory title, or narrowed down to an easement therein, which is evidenced from the language contained in Section 1821, Fifth Division, Compiled Statutes, wherein is said: "Any person or persons owning or having an interest in any land over which any proposed road extends, who shall be of the opinion that the damages awarded him or them by the road viewers are inadequate and insufficient, may personally or by agent or attorney, etc."

But the value of that interest, by reasons of the conditions to be hereafter performed by the claimant before absolute title to the lands can be vested in him, may, by reason of uncertainty of the performance of these conditions precedent, be of little or no value whatever or at all; but that such question must be determined from all the facts and circumstances that should be collated and laid before the board, that go to bear upon the possibility or

probability of the claimant to make final proof before the departmental officers of the land district in which the land is situated.

The labor to be done and performed in other departments requires our attention to the exclusion of a further continuance of this subject matter, which in our opinion ought to be carried to its conclusion and a synopsis prepared of the remaining decisions rendered by this department, which number one hundred and ninety, the publication of which would save much trouble and time in the future, by having a ready reference to the questions and subjects upon which a ruling of this department had been had, but as our limited time will not permit it, we are compelled to forego any further reference to these matters in this report.

TABLE NO. 1.
 SHOWING EXPENSE ACCOUNT OF ATTORNEY GENERAL BETWEEN THE 1ST DAY OF DECEMBER, 1890,
 AND THE 1ST DAY OF DECEMBER, 1891.

FROM WHOM PURCHASED.	When Purchased.	For What Expense Was Incurred.	Value.	When Paid.	Paid From.
	1891.			1891.	
H. J. Haskell.....	March 10....	To stamps.....	\$ 10 00	.....	House bill 5%
Jas. A. McDonald.....	March 31....	To janitor's fees.....	45 00	.....	House bill 5%
Independent Publishing Company.....	March 31....	To 500 stamped envelopes.....	12 00	April 9.....	House bill 13%
Journal Publishing Company.....	April 17....	To 500 manilla envelopes.....	4 50	April 21.....	House bill 13%
Emily Swan.....	April 25....	To ex. case Kennedy v. Kessler.....	4 00	May 4.....	House bill 5%
Helena Independent.....	April 28....	To 500 envelopes, stamped.....	11 00	April 30.....	House bill 13%
Jas. A. McDonald.....	May 1.....	To janitor's fees.....	15 00	May 2.....	House bill 5%
H. J. Haskell.....	May 29....	To stamps.....	5 00	June 15.....	House bill 5%
Geo. D. Barnard & Co.....	May 29....	To docket.....	5 00	.....	House bill 13%
H. J. Haskell.....	June 10....	To expenses Phillips v. Hallaway.....	7 75	June 16.....	House bill 5%
Jas. A. McDonald.....	July 3.....	To water pail for office.....	1 25	August 19.....	House bill 5%
Journal Publishing Company.....	July 20....	To 500 letterheads, second sheet.....	3 00	July 23.....	House bill 13%
Journal Publishing Company.....	July 20....	To one inkstand.....	2 00	July 23.....	House bill 13%
H. J. Haskell.....	August 20....	To stamps.....	5 00	August 21.....	House bill 5%
H. J. Haskell.....	August 31....	To three rulers.....	65	Sept. 24.....	House bill 5%
H. J. Haskell.....	Sept. 22....	To repairing chair.....	50	Sept. 24.....	House bill 5%
Journal Publishing Company.....	Sept. 28....	To six desk blotters.....	50	October 19.....	House bill 5%
Journal Publishing Company.....	October 1....	To fifty legal covers.....	2 40	October 19.....	House bill 13%
Journal Publishing Company.....	October 19..	To 1000 letterheads, second sheet.....	10 65	Nov. 17.....	House bill 5%
Attorney General.....	Nov. 19....	To repairing typewriter.....	15 00	Nov. 23.....	House bill 5%
		Total.....	\$160 70		

TABLE No. 2.

SHOWING THE EXPENSES INCURRED BY THE ATTORNEY GENERAL, AND THE EXPENSES PAID FROM
THE APPROPRIATION OF THE ATTORNEY GENERAL DURING THE FISCAL
YEAR ENDING DECEMBER 1, 1892.

Name of Person Rendering Service or Furnishing Supplies.	When Incurred or Purchased.	Character of Services Rendered or Article for Which Expense was Incurred.	Amount allowed and paid.	Date when paid.	Appropriation Paid From.
	1892			1892	
Southmayd & Fitz.....	Jan. 6....	1 hard platen for typewriter.....	\$5 00	Feb. 23....	Attorney General's Expense Account.....
Journal Publishing Co.....	Jan. 7....	500 envelopes.....	2 75	Jan. 25....	Public Printing Account.....
Journal Publishing Co.....	Jan. 7....	250 envelopes.....	2 25	Jan. 25....	Public Printing Account.....
Western Union Tele. Co.....	Jan. 27....	Telegram.....	75	Feb. 15....	Attorney General's Expense Account.....
Alice Edmunson.....	Feb. 15....	1 typewriter and desk.....	120 00	Feb. 15....	Attorney General's Expense Account.....
Independent Pub. Co.....	Feb. 16....	500 envelopes No. 6½, 2 cent stamps.....	11 50	Feb. 15....	Public Printing Account.....
Independent Pub. Co.....	Feb. 16....	2,000 second sheets.....	5 00	Feb. 15....	Public Printing Account.....
Alice Edmunson.....	Mar. 2....	Services rendered in office of Attorney General..	6 66	Mar. 21....	State Officer's Supply Account.....
Independent Pub. Co.....	Mar. 18....	Binding two law books.....	3 00	Mar. 31....	Public Printing Account.....
May Miller.....	Mar. 31....	Services rendered in office of Attorney General from March 7 to March 31.....	88 60	Mar. 31....	State Officer's Supply Account.....
Independent Pub. Co.....	Apr. 14....	1,000 letter heads lithographed.....	7 50	Apr. 18....	Public Printing Account.....
J. R. Sanford.....	Apr. 15....	Stamps.....	5 00	Apr. 18....	Attorney General's Expense Account.....
Western Union Tele. Co.....	Apr. 15....	1 easy chair.....	51 25	Apr. 18....	State Officer's Supply Account.....
Arthur Curtin.....	Apr. 21....	Telegrams.....	4 18	Apr. 18....	Attorney General's Expense Account.....
Arthur Curtin.....	Apr. 21....	1 Walnut rack.....	14 00	Oct. 17....	Attorney General's Expense Account.....
May Miller.....	Apr. 21....	1 Ottoman.....	3 00	Oct. 17....	Attorney General's Expense Account.....
Independent Pub. Co.....	Apr. 30....	Services rendered in office of Attorney General..	110 00	Apr. 30....	State Officer's Supply Account.....
C. K. Wells & Co.....	May 10....	1,000 envelopes, 2 cent stamp.....	23 80	Apr. 30....	Public Printing Account.....
C. K. Wells & Co.....	May 13....	15 reams typewriter paper No. 4½.....	26 25	May 14....	State Officer's Supply Account.....
C. K. Wells & Co.....	May 13....	2 dozen lead pencils.....	1 40	May 14....	State Officer's Supply Account.....
C. K. Wells & Co.....	May 13....	500 note heads.....	.....	May 14....	State Officer's Supply Account.....
C. K. Wells & Co.....	May 13....	500 envelopes.....	.....	May 14....	State Officer's Supply Account.....
C. K. Wells & Co.....	May 13....	500 document covers.....	3 00	May 14....	State Officer's Supply Account.....
C. K. Wells & Co.....	May 13....	200 linen blotters.....	1 00	May 14....	State Officer's Supply Account.....
C. K. Wells & Co.....	May 13....	3 dozen desk blotters.....	1 80	May 14....	State Officer's Supply Account.....
C. K. Wells & Co.....	May 13....	1 box pins.....	38	May 14....	State Officer's Supply Account.....
C. K. Wells & Co.....	May 13....	1 box pens.....	65	May 14....	State Officer's Supply Account.....
C. K. Wells & Co.....	May 13....	1 quart bottle ink.....	90	May 14....	State Officer's Supply Account.....
C. K. Wells & Co.....	May 13....	2 dozen boxes matches.....	50	May 14....	State Officer's Supply Account.....
C. K. Wells & Co.....	May 13....	6 table sponges.....	50	May 14....	State Officer's Supply Account.....
C. K. Wells & Co.....	May 13....	3 boxes paper fasteners.....	90	May 14....	State Officer's Supply Account.....
C. K. Wells & Co.....	May 13....	3 letter files.....	1 80	May 14....	State Officer's Supply Account.....

C. K. Wells & Co.....	May	13....	1 small bottle red ink	15	May	14....	State Officer's Supply Account.....
C. K. Wells & Co.....	May	13....	1 box rubber bands assorted.....	50	May	14....	State Officer's Supply Account.....
Journal Publishing Co....	May	17....	2 reams typewriter paper	4 10	May	14....	State Officer's Supply Account.....
Western Union Tele. Co..	May	20....	Telegrams	50	Aug.	17....	Attorney General's Expense Account.....
May Miller.....	May	31....	Services rendered in office of Attorney General ..	110 00	May	31....	State Officer's Supply Account.....
Arthur Curtain.....	May	31....	Screw eyes in picture, nails, etc.....	25	Oct.	17....	Attorney General's Expense Account.....
H. J. Haskell.....	June	3....	Official trip to Butte	41 00	June	6....	Attorney General's Expense Account.....
	June	22....	Stamps	10 00	June	22....	Attorney General's Expense Account.....
Northern Pacific Ex. Co..	June	28....	Express charges on 1 package	60	July	18....	Attorney General's Expense Account.....
May Miller.....	June	30....	Services rendered in office of Attorney General ..	110 00	June	30....	State Officer's Supply Account.....
H. J. Haskell.....	July	....	Expense in case of N. P. R. R. Co. v. F. E. Wright, County Treasurer, Fergus County.....	54 30	Aug.	15....	Attorney General's Expense Account.....
May Miller.....	July	29....	Services rendered in office of Attorney General ..	110 00	July	29....	Trav. Expense State Board of Equalization.....
May Miller.....	Aug.	31....	Services rendered in office of Attorney General ..	110 00	Aug.	31....	Expense Account State Board of Equalization...
Western Union Tele. Co..	Sept.	1....	Telegram	67	Sept.	19....	Attorney General's Expense Account.....
H. J. Haskell.....	Sept.	8 to 10.	Expenses case State v. Smith	8 25	Sept.	16....	Attorney General's Expense Account.....
Journal Publishing Co....	Sept.	16....	3 Harvard files	3 00	Sept.	19....	State Officer's Supply Account.....
May Miller.....	Sept.	30....	Services rendered in office of Attorney General ..	110 00	Sept.	30....	Board Prison Commissioners Expense Account ..
May Miller.....	Oct.	31....	Services rendered in office of Attorney General ..	110 00	Oct.	31....	Exp. Account Board Commissioners for Insane ..

